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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 266.

P. O. COX, SAM. LEVY, AND W. M. EVANS, PLAINTIFFS IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

FILED MAY 16, 1905.

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(19,767.)

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Caption.

TATE OF TEXAS, *County of Hamilton:*

term of the District Court, begun and holden within and for unty of Hamilton, at Hamilton, on the 29th day of February, 1904, and which adjourned on the 25th day of March, A. D. the Hon. N. R. Lindsey, Judge thereof, presiding, the follow- use came on for trial, to-wit:—

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

Plaintiff's 1st Amended Original Petition.

Filed Feb'ry 29", 1904.

Honorable District Court of Hamilton County, Texas, Feb'ry Term, A. D. 1904.

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

e Honorable Judge of said Court:

nes now the State of Texas plaintiff herein, leave of the Court eing had and obtained, and files this its First Original nded Petition in lieu of its Original Petition filed in said cause e 10" day of June, 1902, and for amendment says:—

That the defendant P. O. Cox, at the time of the transactions nafter complained of and at the time of the filing of plain- original petition, was a resident citizen of the County of Hamil- nd State of Texas and was at that time and in fact is now en- in the business of a retail liquor dealer in the city of Hico, in County and State; that the defendant Sam Levy, and W. M. s, were and are now resident citizens of the County of Tarrant, State aforesaid.

And for cause of action herein the plaintiff would show to the , that heretofore to wit, on or about the 22" day of May, 1902, efendant, P. O. Cox, under the firm name of P. O. Cox & Co. application for and procured from the Tax Collector of Hamil- ton County, Texas, State and County license to engage in the business of a Retail Liquor Dealer in the city of Hico, in said County and State, and in the place known as the J. A. Gamble

saloon building, situated on a part of lots Nos. 11 and 12, in Block No. 3, Division 1, therein.

That said license was procured for the purpose of engaging in the business of retailing spirituous, vinous and malt liquors and medicated bitters capable of producing intoxication.

That on or about the last said named date and in connection with the procurement of said State and County license, and for the purpose of being able to pursue said occupation, and as is required by law, the defendant, in his own name as principle, made, executed and delivered for record a bond in the sum of five thousand dollars payable to the State of Texas, as required by law, with the defendants, Sam Levy, and W. M. Evans as sureties on said bond, which said bond was duly and legally received and approved by J. C. Main, County Judge of Hamilton County, on the 22nd day of May, 1902.

That under and by virtue of said bond and license the defendant, P. O. Cox, was authorized and in fact had been and was at the time of the transactions herein complained of doing business under the same as a Retail Liquor Dealer, engaged in the business of selling and retailing spirituous, vinous and malt liquors and medicated bitters capable of producing intoxication as hereinbefore alleged, in the city of Hico, in said County and State.

That said bond is conditioned among other things, that the said P. O. Cox & Co., their agent or employé would not sell nor permit to be sold in their house or place of business, nor give nor permit to be given, any spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication to any person under the age of twenty one years, and that they will not permit any person under the age of twenty one years to enter and remain in such house or place of business which said bond was duly signed by all the defendants and filed for record in the County Clerk's office of said Hamilton County, on the 22nd day of May, 1902, and which said bond in words and figures is substantially as follows, to wit:—

THE STATE OF TEXAS, *County of Hamilton:*

3 Whereas, P. O. Cox & Co. desires to engage in the sale of spirituous, vinous or malt liquors and medicated bitters, capable of producing intoxication, to be drunk on the premises in quantities of one gallon or less at —— in the town of Hico, in the County of Hamilton State of Texas, and have made the application and paid the taxes required by law.

Therefore, know all men by these presents, that we, P. O. Cox & Co. as principle, and Sam Levy and W. M. Evans as sureties, are held and firmly bound unto the State of Texas in the sum of five thousand dollars, for the payment of which we bind ourselves, our heirs and legal representatives, jointly and severally; Conditioned, that the said P. O. Cox and Co., principal, shall keep an open, quiet and orderly house or place for the sale of spirituous, vinous or malt liquors and medicated bitters, capable of producing intoxication, and that they or their agent or employé, will not sell nor permit to be sold in their house or place of business, nor give nor permit to be

ven any spirituous, vinous or malt liquors and medicated bitters, pable of producing intoxication to any person under the age of enty one years, or to a student of any institution of learning, or any habitual drunkard, or to any person after having been noti- d in writing through the Sheriff or other peace officer, by the fe, mother, daughter or sister, of the person, not to sell to such rson; and that they will not permit any person under the age of enty one years to enter and remain in such house or place of busi- ss; and that they will not permit any games prohibited by the ws of this State to be played, dealt or exhibited in or about such use or place of business; and that they will not rent or let any rt of the house or place in which they have undertaken to sell irituous, vinous or malt liquors and medicated bitters, capable of roducing intoxication, to be drunk on the premises, on any quan- ty, to any person or persons, for the purpose of running or con- ucting and game or games prohibited by the laws of this State; and at they will not adulterate the liquors sold by them in any manner y mixing with the same any drug; and that they will not know- ingly sell or give away any impure, or adulterated liquors of any kind; then this obligation to be null and void, otherwise to remain in full force and effect.

Witness our hands, this 21st day of May, 1902.

(Signed) P. O. COX.
SAM LEVY.
W. M. EVANS.

THE STATE OF TEXAS, *County of Tarrant:*

I, W. E. Butler, Clerk of the County Court in and for said County of Tarrant, do hereby certify that Sam Levy, & W. M. Evans whose names appear signed to the annexed bond are in my opinion good and ample security for the amounts therein specified. That Sam Levy, and W. M. Evans have property in said County subject to execution of a larger amount, and that if said bond was offered me for approval, the same would be accepted and approved.

To certify which, I hereunto set my hand and impress of my official seal, at office in the city of Fort Worth, Texas, on this the 21" day of May, A. D. 1902.

[SEAL.] (Signed) W. E. BUTLER,
Clerk of the County Court, Tarrant County, Texas.
By WALTER G. KING, *Deputy.*

THE STATE OF TEXAS, *County of Hamilton:*

Before me, F. C. Williams, Clerk of the County Court in and for said County and State on this day personally appeared P. O. Cox, known to me to be the person whose name is subscribed to the fore- going instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 22" day of May, A. D. 1902.

(Signed) F. C. WILLIAMS,
Co. Clerk, Hamilton County, Texas.

Examined and Approved May 22nd 1902.

[SEAL.] (Signed) J. C. MAIN,
Co. Judge, Hamilton Co., Texas.

Filed for record May 22nd 1902.

(Signed) F. C. WILLIAMS,
C. C. C. H. C. T.

3. Plaintiff would further show to the court, that heretofore, to wit, on or about the 30th day of May, 1902, after the procuring of a license by the defendant, P. O. Cox, and the execution and filing of the bond as aforesaid, and while the defendant was doing business thereunder, one Wm. W. Thompson, a person under the age of twenty one years, without the knowledge or consent of anyone authorized to give same, and upon six different, distinct and separate occasions, entered into the defendant P. O. Cox's house and place of business in the place known as the J. A. Gamble saloon building, hereinbefore designated in the city of Hico, in said County and State, and upon each of said six occasions remained in the said house and place of business, and was allowed by the defendant P. O. Cox, his agents and employés, to so enter and remain in said house and place of business to plaintiff's damage in the sum of three thousand dollars, which said house and place of business was then and there devoted to the sale of spirituous, vinous and malt liquors and medicated bitters capable of producing intoxication, contrary to the law and defendant's undertaking in his said bond.

4. Plaintiff would further show to the court that the said minor, Wm. W. Thompson, who was then and there allowed to enter and remain in defendant's place of business and while so remaining therein, on each of said six occasions was sold and given and permitted to be sold and given by P. O. Cox, his agents and employes, spirituous, vinous and malt liquors and medicated bitters to plaintiff's damage in the further sum of three thousand dollars.

5. Premises considered the defendants having appeared and answered herein, plaintiff prays that upon a final hearing hereof, that for the minor Wm. W. Thompson entering and remaining in the house and place of business of P. O. Cox, a place devoted to the sale of spirituous, malt and vinous liquors and medicated bitters capable of producing intoxication and the sale of the spirituous, vinous and malt liquors and intoxicating beverage under license and bond, it have judgment against the said P. O. Cox as principal, and the sureties upon his bond, Sam Levy, and W. M. Evans, liquidated damages in the sum of five hundred dollars for each infraction of the bond herein alleged and pleaded, and in the aggregate in the sum of three thousand dollars; and that for the sale and gift of spirituous, vinous and malt liquors to said minor, that it have judgment against the defendant P. O. Cox, as principal, and the sureties on his bond, Sam Levy, and W. M. Evans, liquidated damages in the sum of five hundred dollars for each infraction of said bond herein alleged and pleaded as to sale and gift; and that it have judgment upon the twelve counts and violations of said bond,

herein pleaded, liquidated damages, in the sum total of six thousand dollars, together with all costs of suit in this behalf expended and for such other further general and special relief as to the Court may seem equitable and proper in the premises.

H. E. CHESLEY,
Attorney for the Plaintiff.

No. 1336. The State of Texas *vs.* P. O. Cox *et al.* Suit upon Liquor Dealer's Bond. Plaintiff's 1st Amended Original Petition. Filed Feby. 29th 1904. R. C. Cornelius, Dist. Clerk Hamilton Co. Texas.

Defendant's 1st Amended Original Answer.

Filed Mch. 3d, 1904.

In the District Court of Hamilton County, Texas. February Term 1904

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

Now comes the defendants herein by attorney, and under leave of the Court file this defendant's First Amended Original Answer, in lieu of and to take the place of defendant's Original Answer filed herein on, to wit, the 25th day of August 1902, and for amendment say an- allege.

First. Defendant's demur to plaintiff's petition, and say the same shows no cause of action against them, and of this they pray judgment *and* etc.

D. LANGFORD,
Att'y for Defendants.

Second. And for special exception defendants say that plaintiff's petition is insufficient in law because the alleged liquor
7 dealer's bond upon which this suit is predicated fails to show on what lot, block or street in the town of Hico, the said business of liquor dealer was to be carried on, nor is the house where the same was located or to be located described or in any manner identified. Wherefore defendants say that said petition is insufficient in law, and of this they pray judgment, *and* etc.

D. LANGFORD,
Att'y for Defendants.

Third. Now come the defendants herein and demur to plaintiff's petition filed herein, and say the same is insufficient in law, because that part of the act of the legislature under which this suit is brought

regulating the sales of liquor and prescribing the tax and penalty is unconstitutional, construed in connection with Art. 5060½ of said act; in that said Art. exempts from the provision of the statute people engaged in the same business, to wit, the sale of vinous and intoxicating liquors, provided they sell wine produced from grapes grown in the State, by the seller. And of this defendants pray judgment *and* etc.

D. LANGFORD,
Att'y for Defendants.

Fourth. Without waiving the foregoing exceptions or either of them, defendants deny all and singular the allegations in plaintiff's said petition contained and of this they put themselves on the County *and* etc.

D. LANGFORD,
Att'y for Defendants.

Fifth. And for further answer defendants say that if P. O. Cox his agents or employés ever sold, or gave, or permitted to be sold or given any intoxicating liquor to W. W. Thompson, he being a minor on or about the date alleged, which is not admitted but denied that the same was sold and given to said Thompson in good faith with the belief and having good grounds for said belief, that said W. W. Thompson was twenty one years of age, and this they are ready to verify.

D. LANGFORD,
Att'y for Defendants.

8 Sixth. And for further answer herein Defendants aver that if W. W. Thompson, being a minor, ever entered and remained and was permitted to enter and remain in the saloon of P. O. Cox, by the said P. O. Cox, his agents and employés as alleged in plaintiff's petition, which is not admitted, but denied, that said W. W. Thompson so entered and remained in the place of business and saloon of said P. O. Cox, for the purpose of procuring intoxicants, the said P. O. Cox, his agents and employés believing and having good grounds to believe that said W. W. Thompson was twenty-one years of age. And the said W. W. Thompson so entered and remained, if at all, no longer that was reasonably necessary to procure said intoxicants which were sold and given to him by said P. O. Cox, his agents and employés, in good faith, believing and having good grounds to believe that said W. W. Thompson was above the age of twenty one years. And defendants aver that the alleged entering and remaining of the said W. W. Thompson and the permission by the said P. O. Cox, his agents and employés for said W. W. Thompson to enter and remain in the saloon of P. O. Cox was but a necessary incident, and part of sales of intoxicants to said W. W. Thompson by the said P. O. Cox his agents and employés made in good faith believing and having good grounds to believe that said W. W. Thompson was twenty one years of age, and this they are ready to verify.

D. LANGFORD,
Att'y for Defendants.

Seventh. And for further answer herein defendants say that if W. W. Thompson, ever entered and remained in the saloon of P. O. Cox & Co. that the same was for the purpose of procuring intoxicants which were sold and given to him in good faith, with the belief that he was above the age of twenty one years, and after and before intoxicants were sold and given to said W. W. Thompson, he did not and was not permitted to tarry or loiter in said saloon. And this they are ready to verify.

D. LANGFORD,
Att'y for Defendants.

No. 1336. The State of Texas *vs.* P. O. Cox *et al.* Defendant's 1st Amended Original Answer. Filed Mch. 3d, 1904. R. C. Cornelius, Dist. Clerk Hamilton Co. Texas.

9 *Plaintiff's 2nd Supplemental Petition.*

Filed Mch. 22", 1904.

In District Court of Hamilton County, Texas, Feb. Term, 1904.

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

To Hon. N. R. Lindsey, Judge of said Court:

Now comes the plaintiff and files this his second supplemental petition, leave of the Court having been first had and obtained, and replying to the defendants' First Amended Original Answer, says and alleges as follows:—

First. Plaintiff demurs generally to the defendants' said answer and says same is insufficient in law and affords no defense to the cause of action pleaded by the plaintiff and of this he prays judgment of the Court.

MAIN & CHESLEY,
Attorneys for the Plaintiff.

Second. Plaintiff specially excepts to paragraph No. 6 of the defendants' answer and says that same is insufficient in law in this: That a belief based upon good ground, that W. W. Thompson, was of age at the date of the alleged entry and remaining would not constitute a defense to the charge in plaintiff"s petition for permitting the minor to enter and remain in such place of business, and this though the entering and remaining may have been but an incident to and a part of sales of intoxicants made to the minor and because the only defense available to said charge is set up in paragraph 7, of said answer. Wherefore, plaintiff prays that all of said paragraph No. 6, be stricken out.

MAIN & CHESLEY,
Attorneys for the Plaintiff.

Third. Further replying to said answer the plaintiff denies all and singular the allegation in the defendants' answer contained and of this he puts himself upon the County and prays judgment of the Court.

MAIN & CHESLEY,
Attorneys for the Plaintiff.

No. 1336. The State of Texas *vs.* P. O. Cox *et al.* Plaintiff's Supplemental Petition Filed 22" day of Mch. 1904. R. C. Cornelius, Clerk Dist. Court Hamilton Co. Texas.

10 *Statement of Facts.*

Filed Apr. 12th, 1904.

In the District Court, Hamilton County, Texas, February Term, A. D. 1904.

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

Be it remembered that on the trial of the above numbered and entitled cause in the District Court of Hamilton County Texas the following evidence was introduced and none other to wit:—

The plaintiff offered and read in evidence the following application for license and the following bond, to wit:—

Application for License for the Sale of Liquor.

Application for License for the Sale of Spirituous, Vinous or Malt Liquors or Medicated Bitters.

THE STATE OF TEXAS, *County of Hamilton:*

We the undersigned hereby make application for license for the sale of spirituous, vinous or malt liquors or medicated bitters in quantities of one gallon or less to be drunk on the premises; and having been duly sworn declare that on the 24th day of May 1902, we intend to engage in the sale of such liquors, in the quantities and in the manner above applied for, at J. A. Gamble building, in the town of Hico County of Hamilton, and parts of Lots No. 11 and 12 in Block No. 3 Division one.

(Signed) P. O. COX.

Sworn to before me this 22" day of May 1902.

[SEAL.] F. C. WILLIAMS,
Co. Clerk, Hamilton Co., Tex.,
By J. T. DEMPSTER,
Deputy.

Liquor Dealer's Bond.

THE STATE OF TEXAS, *County of Hamilton:*

Whereas, P. O. Cox & Co. desires to engage in the sale of spirituous vinous or malt liquors, and medicated bitters capable of producing intoxication, to be drunk on the premises, in quantities of one gallon or less at ——, in the town of Hico, in the
11 County of Hamilton State of Texas, and has made the application and paid the taxes required by law.

Therefore, Know all Men by these Presents, That we P. O. Cox & Co., as principal, and Sam Levy and W. M. Evans as sureties, are held and firmly bound unto the State of Texas in the sum of five thousand dollars, for the payment of which we bind ourselves, our heirs and legal representatives, jointly and severally: Conditioned, That the said P. O. Cox & Co. principal, shal- keep an open, quiet, and orderly house or place for the sale of spirituous, vinous, or malt liquors, or medicated bitters capable of producing intoxication; and that they or their agent or employé, will not sell nor permit to be sold in their house, or place of business, nor give nor permit to be given any spirituous, vinous, or malt liquors, and medicated bitters capable of producing intoxication, to any person under the age of twenty-one years, or to a student of any institution of learning, or to any habitual drunkard, or to any person after having been notified in writing, through the sheriff or other peace officer, by the wife, mother, daughter, or sister of the person, not to sell to such person; and that they will not permit any person under the age of twenty-one years to enter and remain in such house or place of business; and that they will not permit any games prohibited by the laws of this State to be played, dealt, or exhibited in or about such house or place of business; and that they will not rent or let any part of the house or place in which they have undertaken to sell spirituous, vinous, or malt liquors and medicated bitters capable of producing intoxication in any quantity to be drunk on the premises, to any person or persons for the purpose of running or conducting any game or games prohibited by the laws of this State; and that they will not adulterate the liquors sold by them in any manner, by mixing with the same any drug; and that they will not knowingly sell or give away any impure or adulterated liquors of any kind; then this obligation to be null and void, otherwise to remain in full force and effect.

Witness our hands, this 21st day of May, 1892.

P. O. COX.
SAM LEVY.
W. M. EVANS.

12 Examined and approved May 22nd 1902.

J. C. MAIN,
Co. Judge, Hamilton Co., Texas.

Certificate of the Clk of Terrant Co. as to Solvency of Bond.

THE STATE OF TEXAS, *County of Tarrant:*

I, W. E. Butler, Clerk of County Court in and for said County of Terrant, do hereby certify that Sam Levy and W. M. Evans, whose names appear signed to the annexed bond are in my opinion good and ample security for the amounts therein specified. That Sam Levy and W. M. Evans have property in said County subject to execution of a large amount, and that if said bond was offered me for approval, the same would be accepted and approved.

To certify which, I hereunto set my hand and impress of my official seal, at office in the city of Fort Worth, Texas, on this the 21st day of May, A. D. 1902.

(Signed) W. E. BUTLER,
[SEAL.] *Clerk of County Court, Tarrant County, Texas.*
By WALTER G. KING, *Deputy.*

Certificate of Record, Clk Co. Court, Hamilton Co., Tex.

THE STATE OF TEXAS, *County of Hamilton:*

Before me F. C. Williams, Clerk of the County Court in and for said County and State on this day personally appeared P. O. Cox, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 22 day of May A. D. 1902.

[SEAL.] F. C. WILLIAMS,
Co. Clerk, Hamilton County, Texas.

Filed for record, May 22–1902.

F. C. WILLIAMS,
C. C. C. H. Ct.

Certificate of Record, Clk Co. Court, Hamilton Co., Texas.

THE STATE OF TEXAS, *County of Hamilton:*

I, F. C. Williams, Clerk of the County Court in and for said County, do hereby certify that the foregoing instrument of
13 writing dated the 21st day of May A. D. 1902, with its certificate of Authentication, was filed for record in my office, on the 22" day of May, A. D. 1902, at 2 o'clock, P. M. in the Bond Records of said County in Book "1" on page 24.

Given under my hand and seal of office, at Hamilton the day and year last above written.

[SEAL.] F. C. WILLIAMS,
Clerk County Court, Hamilton County, Texas.
By J. T. DEMPSTER, *Deputy.*

Testimony of W. B. Thompson.

W. B. THOMPSON, a witness for plaintiff, duly sworn, testified:—
My name is W. B. Thompson. I live in Erath County Texas about nine miles North of Hico Texas. I have been in the County for about twenty seven years. I am the plaintiff in the suit cause #1335, W. B. Thompson *vs.* P. O. Cox *et al.* I am the father of W. W. Thompson. On the morning of May 30" 1902, my son W. W. Thompson left home stating that he was going to Hico. At that time he was about eighteen years and six months old. He was born November 30" 1883. I never did give my consent to P. O. Cox or any of his agents or employees to sell or give my son W. W. Thompson liquor. I did not know there was any such a man as P. O. Cox. I never did give my consent to P. O. Cox or any of his employees or agents to sell or give my son W. W. Thompson any drink of any kind,—or any one else. I never gave my consent to P. O. Cox or any of his agents or employees to permit my son W. W. Thompson to enter and remain in his place of business.

Cross-examined by DEFENDANT:

I have lived in Erath County for about twenty seven years. My son W. W. Thompson, was born on November 30" *1903*,—that is what the record shows. Yes it was on May 30" 1902 that he left with the statement that he was going to Hico. I remember it was the 30" of May because I went to Hico the next day myself and Mr. Connolly saw me there and asked me how old the boy was and I told him I did not think he was eighteen years old then and then he told me what had happened, and after I went home we talked about it and I remember it was the 30", because I have a clock at
14 home that tells the day of the month, and I looked at it. The boy left the house that morning pretty early,—I suppose the sun was about an hour or an hour and a half high,—it was tolerable soon after breakfast. I did not *send* him go to Hico,—I did not know anything about it until he started, and he then said he was going to Hico to get him a saddle. He was staying at my house then. I do not remember how long at that time he had been staying at my house then. He had worked there a few days and if I did not have anything for him to do he would go somewhere else and work. Prior to that he had worked some for my son in law. When I did not have anything for him to do he went where he pleased and hired to whom he pleased. He never asked me about who he should hire to. He would often tell me that he was going to work for such and such a person. Sometimes he might ask me and sometimes he might not,—if I did not have anything particular for him to do he wouldn't. When he worked for other people I never had anything to do with his wages,—he always kept the money himself. On the morning of May 30" 1902., I heard him at the breakfast table or soon after say that he was going to Hico,—he said he was going to Hico to get him a saddle. I was out about the lot when he left that morning. Yes I testified in a former trial of

this case. I only know where he went by what he said.—he said he was going to Hico, and I never saw him any more that day. No I did not ever give my consent for him to go into Cox's saloon,—I did not know Cox had a saloon. No I did not know at — time that there were saloons in Hico,—I was there some time before that and some one told me that they were going to put in saloons again there. The next time after the boy went to town that I saw him was the next morning about nine o'clock. I had started to Hico and I met him about three miles this side of my house,—he went on home and I came on to town. My son is living with me now,—he has been there off and on ever since the last trial in this suit. He has worked a little away from home since then. He has been at home about three fourths of the time since then. He worked for Mr. Salmon, his brother in law some, and he picked cotton for several people there in the community,—sometimes a day or two and sometimes as much as a week, and sometimes I did not know where he was. Prior to May 30" 1902., I had seen empty bottles lying around the buggy shed and while I did not absolutely know it, yet I was satisfied that the boy had been getting whiskey somewhere. Yes I have talked to him about it. I just asked him who put them bottles there, and sometimes he would say he did not know, and sometimes when I would ask him where he got the whiskey he would say "well I got it all the same." I asked several boys around there and they said they did not know anything about him drinking whiskey,—that they never got him any or saw him get any. I had been finding bottles for a year or so back prior to May 30" 1902,—I would find half pint bottles and sometimes pint bottles. I had another boy older than this one, but he never got any whiskey. I never found very many bottles,—when he would go off to town and come back I would find the bottles. Yes in February 1901 he brought some whiskey to the house that I had sent him for, —that was the time we had the measles there and I sent him to town to get some whiskey. I told him to go to Bill Dawson. I told him I wanted him to go to town that day and get half a gallon of good whiskey. I told him to go to Bill Dawson and get half a gallon of good whiskey, and told him while he was getting his horse ready I would write an order for it, and he said 'I can get the whiskey without any order,—I do not want any order," and he went and got his horse and went off without the order. I told him Dawson would not let him have it, and tried to get him to take the order because I did not think he could get the whiskey without it, and I did not want him to ride up there and back for nothing. He went off without the order anyhow. I would have gone myself but I was not well enough. Yes I told him to go to Bill Dawson, and I knew Bill Dawson was a saloon keeper. The reason I wanted to send the order was that I knew it was against the law to sell minors whiskey.

Re-examined by the PLAINTIFF:

Bill Dawson lived at Stephenville,—he did not live at Hico. That is the only time I ever sent the boy after whiskey. Yes my family was sick with the measles then.

16 Cross-examined by DEFENDANT:

I did not send him to a saloon,—I told him to go to Bill Dawson and tell him to send me the whiskey. Yes I knew he would have to go into a saloon to get it,—but I have went to saloons many times and got whiskey and never went in the house. I did not study much about whether he would have to go in and get it or would get it from the outside. I just told him to go to Bill Dawson and get the whiskey,—I wanted him to take the order to get it,—I had no idea that he would bring back the whiskey because he did not take the order. Yes I permitted him to ride up there which was twelve miles without the order.

Testimony of W. W. Thompson.

W. W. THOMPSON, a witness for plaintiff, being duly sworn, testified:—

I am a son of W. B. Thompson. I am now past twenty years old. I will be twenty one years old the 20th day of this coming November. I know the year I was born. I was born in 1884. Yes I believe it was 1884. Yes I am certain of that. I am twenty past,—I will be twenty one the 20th of this coming November. In 1902 I was eighteen past. I know P. O. Cox. I do not know where he is now. I knew him when he lived at Hico. He run a saloon there, yes I have been in his place of business. I was there on May 30th 1902. I was in there several times that day. I was in there some six or eight times that I remember of being in there. I purchased whiskey and beer while I was in there. I paid for it. I remember the first time I was in there that day. The first time I was in there that day another fellow named McFadden went in with me and we bought two toddies. We paid 10c. each for them. I paid for them. I drank mine. That fellow May was the bar tender. The toddies were made out of whiskey. No one objected to my coming in there. No one asked me to leave. The first time I stayed in there some ten or fifteen minutes,—maybe twenty minutes. Fifteen minutes anyhow. I talked around in there a while,—there were a lot of fellows sitting in there on beer kegs and I talked to them. After we drank the whiskey we stayed around in there
17 awhile and then drank a small bottle of beer apiece, before going out. Then we went out and knocked around town awhile and then went back in the saloon. The same fellow was with me the second time that was with me the first time. I think that fellow is in California now. The second time we were in there we bought beer, I think it was keg beer,—I know it was. I paid a nickel a glass for it. Mr. Cox waited on us that time. Mays waited on us the first time. I do not know exactly the time we stayed in there that time,—about five minutes. We stayed in there some five minutes—maybe ten. This time we had to wait a right smart little bit before they got our drinks ready,—there were a whole lot of men in there and they had to be waited on. I think we went out that time immediately after we drank. We went to the laundry. I was back in there after that again. I reckon we were gone down to

the laundry about half an hour before we went back into the saloon. Yes this same man went back in there with me the third time. I bought beer when I went in there. I paid a nickle a glass for it. This time I stayed in there about an hour I reckon. I stood up some and set down some. There was no one that time presented a written order to me to sign. I think after that they did,—I do not remember very much about the statement. The reason I do not remember about the statement much is that I was drunk. I do not know the number of times I drank before the statement was secured. I do not remember having a conversation with Mr. Cox that day until he came around with that paper,—I would not sign it until I got too drunk and then he got me to sign it then. I never signed it when he first brought it to me. While I was in there that half hour I drank as many as half a dozen times. After I went out this time I think I went back again. I bought a saddle that day. I do not remember of starting home. I bought a couple or three bottles of beer before I left some time and put it in my saddle pockets. I did that a right smart while before I started home. I do not know what I did with that bottled beer. I do not remember what time of the day it was when I left for home. I got home next day about twelve o'clock. I stayed on the road part of the night, and I stayed the rest of the night at my sister's house. She
18 lived about four miles from my father's place,—on this side. I do not remember how long I had been in the saloon at the time they got me to sign that statement. I had been drinking all along before I signed the statement. The first thing that was said about age, Mays, the bar tender, says "are you boys twenty one years old," and we told him "we reckoned we were," and there was nothing else said about it at all until Cox come around with that paper. Cox never did ask us if we were twenty one years old. He brought the paper around to me and said some men were cutting up out there on the outside about it, and said if I would sign that paper it would save him. Up to the time I took the bottle-beer out and put it in my saddle pockets I had been in the saloon three of four times,—maybe more,—I would not be positive about it.

Cross-examined by the DEFENDANTS:

Yes I say I was born in 1884. Yes I think that is my birth year. Before this day I had seen P. O. Cox there around Hico a time or two. I had not been in his saloon before that day. No I do not think I had taken whiskey home often and left bottles lying around my father's premises. Yes I might have left bottles around there,—I do not know as I left anything around the place. Yes I have carried whiskey home. I did not leave bottles laying around the premises,—my father sent me to Stephenville once after some whiskey. I do not know as I ever left bottles that I had used the whiskey out of laying around my father's premises. No I had never left any empty bottles about the stables or lying around where my father could find them. My father has got after me a time or two about drinking whiskey. I do not know that he had

found any bottles I had laid around. I do not know as I left any bottles lying around the premises. This morning I left for Hico. I left home between nine and ten o'clock and went straight on to Hico. It was about eight and a half or nine miles to Hico. It took me about an hour and a half to make the trip. When I got to Hico I knocked around over town until I met up with McFadden. He was a man that used to live up close to Clairette—I think he is in California now,—I am not for certain about that. He left this country last September I met him along about
19 Stovall's building somewhere. I do not know how we come to go to the saloon,—we just walked up there. I do not remember which one of us proposed going up there. We did go up to the saloon, and both went in at the same time. I did not state anything to him about me not being twenty one years old. The bar tender asked us if we were twenty one years old, and we told him we reckoned we were. Yes I remember swearing here on a former trial of this case. Q. Do you remember stating that it was about eleven o'clock when you went in there and 'the bar tender when we walked up asked us if we were twenty one years old, and we told him we were. I told him I was twenty one years old.' Did you state that? A. I made some statement about it. Q. You did tell him you were twenty one years old didn't you? A. We told him we reckoned we were twenty one. I told him I reckoned I was twenty one. Q. Did you not testify directly before that you told him you were twenty one years old? A. I do not know. Q. Do you remember? A. I do not remember much about it. Q. Did you tell him or not that you were twenty one years old? A. I never told him for certain that I was twenty one. I told him I reckoned I was twenty one. That was all there was said, and I never paid much attention to it. McFadden did not say anything about it. The bar tender just says 'are you boys twenty one years old,' and we both spoke at the same time and said we reckoned we were. That was about all that was said about it. There was nothing else that I remember of said about it. No I was not then twenty one years old. I do not know as I had been in other saloons and told them I was twenty one years old. I do not know as I have told other bar tenders that I was twenty one years old. I did not tell any other bar tenders I was twenty one years old. It did not take any time at all when the bar tender was asking about our age. Yes there were others in the saloon at the time. I do not think there was any one else buying drinks right where we were,—there were some down towards where Mr. Cox was at the far end, and he was opening a keg of beer. Yes he could see us. I took a toddy. It does not take very long to fix the toddy. Yes he had to get out the glasses and fix it,—I guess it took him about a minute to do that,—I was not timing him. Yes he had to get the glasses
20 and water and set out the bottles with the whiskey in it. Then we drank the toddies and paid him. I do not remember whether I paid him the exact change, or whether he had to make change for us. I paid him ten cents each for the drinks. I do not know that they were selling such drinks at a bit, or two *of* a

quarter,—they sold them to me at ten cents each. After we drank the whiskey we stayed around in there a little bit. We stayed in there some ten or fifteen minutes. No I can't tell how much time was taken up in getting the drinks ready, and drinking them, and making the change and paying for the drinks,—just a short time though. I do not know that I testified on a former trial of this case that I paid for the drinks, the price was ten cents,—I paid twenty cents for both, and then we went out and knocked around,—that we immediately went out,—I do not remember that. No I will not say that I did not testify that way. I did not go immediately out after that. When we first went in we taken a drink a piece,—I did not drink any more right then—we stayed there in the saloon a little bit and then took some more. We were there in the saloon talking, to first one and then another. I think Tom Lane was one of the parties in there. I think we stood up around in there. I do not remember whether or not there were chairs in the saloon. We stood on the floor to do our talking. We were back some two or three steps from the counter. I do not know what the bar tender was doing while we were doing this. I do not know whether he saw us or not after we left the bar. He seen us when we come back up to the bar. He could have seen us there while we were away from the bar. No I could not swear that he saw us while we were away from the bar. There were several in there talking at the time. I reckon there was a dozen persons in the room at the time besides me and McFadden. I do not believe I can remember the names of any of them except Tom Laney,—I had seen all of them before, but I did not know the-re names. The first time I was in the saloon I took one drink of whiskey when I first went in and then I took a drink of beer before I went out. I did not testify on the former trial that I only drank the whiskey and went out. I did not testify to any such thing. I testified then that I took two drinks the
21 first time. Yes the whole time I was in there was not over about fifteen minutes. After we took the second drink we knocked around town for a little while,—I do not remember every place we went to. We went around by Stovall's building and then around by Phillip's. There we looked at some saddles. I did not buy one then. After we left there we went back to the saloon. We did not go to the laundry that time. It was after I went in the saloon the second time that I went to the laundry. I do not remember whether it was I or McFadden that proposed going back to the saloon. One wanted to go about as bad as the other. I do not remember what all was said when we started back the second time. I did all the paying for the drinks,—he did not have any money. We went in the saloon through the main door on the street. The second time we went in at the main front door,—the same one we went in the first time. I do not remember who we met in there that time. When we went in there the second time Mr. Cox was waiting on the bar. When we went in there that time it was somewhere about noon,—I do not know the exact time. I had not eat dinner then,—we did not eat dinner that day. When I first saw Cox he was opening up a keg of beer. The second time we went in there

he was behind the bar and got the beer for us. When we went in we told him we wanted a couple of beers, and he set them out to us and there was no more said. I paid for the beer. I do not know as I walked right straight out,—we stayed in there some little bit. I do not know what we were doing in there. Yes I know I stayed in there,—I know we stayed in there a little bit,—we never stayed in long the second time. We were just standing around in there,—just like you or any one else would be. I do not remember who all was there at that time. Yes there were other- besides me and McFadden there, but I don't remember who they were. The bartender, Mays, was also in there,—he was waiting on some of the rest of them. He was behind the bar. They were both waiting on the bar then,—Mays and Cox. When we went in the first time Cox was not waiting on the bar,—he was opening up a keg of beer, and Mays was waiting on the bar. I am not for certain whether Cox spoke to me or not. I would say approximately that I stayed in there the second time about five minutes. I was not timing
22 myself. Yes Cox had to draw the beer,—that takes some time of course, but mighty little. Yes he drew this beer from a faucet. I do not know how long it took him to do that,—No it did not take him as much at two minutes. I guess it would take about a minute to do that. No, not a minute to each glass,—a minute to draw both of them. Yes Cox was a one armed man, but he could carry two glasses in one hand. I could not swear that he could draw the two glasses of beer in one minute and I could not swear that he couldn't,—it took him a very little time to do it though. Yes after we drank the beer I had to pay for it. I do not remember whether I had the exact change, or whether Cox had to make change for me. Yes if he had to turn around and make change that would take a little time. I do not remember as to the matter of change. We went out that time at the front door, and went to the laundry. The laundry is down close to Weiser's mill,—South of where we were,—I guess is was about 350 or 400 yards from the saloon. I do not remember who was running the laundry at that time By this time I was getting a little drunk. Yes I say that I was in the saloon the second time about five minutes. I do not know the exact time we got back to the saloon the next time. I do not remember very much along after the second time I was in the saloon,—no, the third time. Yes it was after I went to the laundry. We stayed at the laundry just a short time,—two or three or four minutes. I just went to get some laundry and pay for it and then I came back. By this time I was becoming intoxicated. I can remember everything very well when I was at the laundry, but still I was tolerable boozy. From the laundry we went back up to the saloon,—yes to Cox's saloon. Yes McFadden was with me. We went into the saloon through the front door. Cox and Mays were in there when we went in. They were behind the bar. I do not remember which one was at the front part of the bar. When we went in there we drank some more beer. We called for it and they set it out, and we drank it and paid for it. I called for it, and I guess I paid for it. I reckon Cox waited on us that time. I do not know for certain,—

seems to me though that he did. Yes I know we took beer,—
23 keg beer. I do not remember which one of them drew the beer. I do not remember what was said. I do not know that there was anything said,—nothing more than we called for what we wanted and they set it out, and we drank it. No we did not leave then, we stayed there a good while. We sit down and stood up both, until we got to where I did not know what I was doing,—I got that way before I left that time. I do not know much about what took place after I got that way. There were a lot of beer kegs about the middle of the house, up next to the wall, and we set down on them some. I did know at the time who drew the beer, but I have forgotten. The other boy sit down also and there was some other men sitting down too. I remember that Charley Dasher and a man named Houck was there. I think we talked to them a little,—I am not for certain. We drank in there several times before we left. No I do not remember how many times we did drink before we left that time. I would say about four times. No I do not remember of getting up from the beer keg where I was sitting and coming up to the counter and calling for the drinks,—I remember it for awhile, but I soon got past remembering. We took the drinks sorter along like. I do not know whether we went back and sit down on the kegs after we took the drinks or not. When we were sitting on the kegs, Cox and the bar tender were over behind the bar. I suppose they were waiting on other customers,—I never paid much attention to them. I do not know whether they paid much attention to us or not. I do not know as they said anything to me. It was sometime along about that time that Cox brought that paper around there. It was while I was in there that time that I think the paper was first brought to me. I do not know when I signed that paper. Yes I testified before about it. No I did not then say that I knew when I signed it,—I said that I did not know. No I did not say then that I knew everything when I signed it. No I did not say that on the other trial,—for I did not know everything when I signed it. I was there in the saloon when Cox first come to me with that paper,—I do not remember exactly where in the saloon I was. I do not remember whether I was sitting on a keg or not. I was there somewhere about the middle of the saloon as I now remember. I do not know whether I signed
24 it on a desk or on top of a beer keg. Cox told me he wanted me to sign the paper, and said some of them were out there in front cutting up about it, and that it would save him, and I told him I would not sign it and I never signed it then. I was pretty far along when he brought the paper to me, but I remember telling him the first time that I would not sign it. I do not know what the statement was,—I did not read the paper. Cox did not read it to me. No I did not read anything. He wanted me to sign it and I would not. No I did not know at the time I signed it that I was signing it. The reason I did not want to sign it was because I did not know what it was,—I did not know much about it. I do not know where I went to sign it. Cox first came to me with it when I was somewhere near the middle of the saloon, but I did not sign it then. I told him

I would not sign it. I remember telling him that I would not sign it. I do not remember what he said. I do not remember when he came to me again,—I do not know when I signed the paper. No I can't tell about the hour of the day it was when I signed the statement. I do not know where I was when I signed the paper, whether I was in the saloon or not. I do not know what I did next after I signed it,—I got drunk and those fellows got me off home. Some of them told me it was the Gamble boys that got me off home,—I do not remember though who it was. Yes I had drank some before this time at Hico. Yes I had been drunk a time or two before. I bought the bottled beer and put it in my saddle pocket about the third time I was in the saloon. I do not remember which one of the men I bought the bottled beer from. I had not got very drunk when I bought the bottle beer. I do not remember how many bottles I got. I can't say how long that was before I left town and started home. I guess it was about a couple of hours before I left. I do not remember very much between the time I bought the bottle beer and the time I went home. Yes I bought a saddle in town that day. I had been in the saloon a time or two when I bought the saddle. I bought the saddle right after noon. Yes I bought it before I signed this statement. I do not know exactly when I signed the statement, but it was along in the evening sometime. I guess I did ride out of town that evening. Yes since that time I have been indicted in Erath County, Texas,—for malicious mischief, and one thing another. There are several things that they had me charged with up there,—one of your witnesses that you had before was the cause of it. They had us up there for taking some lap robes. Yes I was convicted in two cases for theft.

Re-examined by the PLAINTIFF:

Yes Mays was waiting on the bar while we were in there. He was behind the bar. He had his hat off. Yes he was waiting on customers while we were in there. Yes he did that in the presence of P. O. Cox. Yes I got down some where on the road home that night. I do not know how long I stayed down,—I got over it about ten or eleven o'clock that night. Yes my father had gotten after me for drinking and objected to me drinking.

Cross-examined by the DEFENDANT:

Yes before I went to Hico this time, I had worked for other people than my father and received my own wages without consulting my father. Yes I had traded for myself before that. I bought a buggy from A. L. Phillips before that, and paid him part of it, and he took a lien on the buggy for the rest, and I signed my name to the note I owed him. I do not remember whether he took a mortgage on the buggy or not,—it was only for $15.00. Yes I made the trade in my own name and paid him all but fifteen dollars.

Re-examined by the PLAINTIFF:

I had seen Cox there in Hico before then. I lived about eight or nine miles from Hico. No I do not know whether Cox ever knew about me working for myself or not.

Cross-examined by DEFENDANTS:

Sometimes I would go to Hico maybe twice a week and again I would not be there for a month. Hico was my trading point. I did not get my mail there.

Testimony of John T. Adams.

JOHN T. ADAMS, a witness for the plaintiff testified as follows:—
My name is John T. Adams. I live at Hico Texas. I have lived in Hamilton County about twenty eight years. I know Mr. Thompson, the plaintiff. I have known him about seven years. I
26 know his son, W. W. Thompson, and have known him about the same time. I have lived in Hico going on nine years. I saw W. W. Thompson in Hico on or about May 30" 1902. The first time I saw him he rode up in front of P. O. Cox's saloon, and got down and went in at the saloon door. At that time I was in the millinery department of Wm. Connolley's store. I suppose I stayed there some fifteen or twenty minutes. I did not see him come out while I was there. During that time I was standing where I could have seen him had he come out at the front door. My attention about that time was called back in the store and I went back in there. I intended staying in the millinery department where I could see until he come out of the saloon, but my attention was called back in the store and I went back there without seeing him come out then. If I remember right it was then about one o'clock,—shortly after I come back from dinner. About half an hour after that I saw him riding up the street, and I went in front of the Connolly building and called Mr. Welch's attention to him. I called Mr. Welch's attention to his manner of riding up and down the street, and I told Mr. Welch there was a boy under the influence of liquor already since our new saloon come in. I went to the Southeast corner of the building where I could watch him as he went back to the saloon, and he rode up there and got off and went into the saloon again, and Mr. Welch and I stood there and watched him. I think we stood there somewhere in the neighborhood of twenty or thirty minutes. I took out my little book and put the date down in it so that I would not forget it. Yes he rode up and got off his horse, and went into the saloon, and was in there twenty or thirty minutes and then he come out and got on his horse and rode along in front of Mr. Connolly's grocery store. As he come out of the saloon that time he had two bottles of beer and he put one each in his saddle pockets. I think they were pint beer bottles. Later in the evening I saw the boy again as I went home,—he came out of the saloon door and got on his horse and Mr. Anderson Gamble was helping to get him on and start him on towards home. I ob-

served the boy's conduct at that time. It seems to me that any one that had observed the boy's condition would have said at once that he was drunk,—he could not ride straight and his conduct
27 in town would prove to any one that he was drunk. I have known the boy about seven years,—that was two years ago when he was there in Hico on this occasion. Yes at that time I observed the boy with reference to his age. From his appearance and general conduct of course I would not have taken him to be twenty one years old then. That was the reason I watched him that day, and took out my book and put down the date,—I was satisfied he was under age. The last time I saw him that day was as I went home in the evening.

Cross-examined by DEFENDANTS:

At the time I am speaking of I had been at work for Mr. Connolly about four years. Yes after that I went to see the plaintiff in this suit, and I talked with the old gentlemen and with the boy. Yes I talked to the plaintiff with reference to bring this suit on the liquor dealer's bond. I did not persuade W. B. Thompson to bring this suit. I told him just what I had seen concerning his boy. It was about twelve miles up to where Mr. Thompson lived and I quit my work to go up there and tell him about it. Yes I quit my labor to go out there and do what I considered to be my duty and to help the officers of my County to do their duty. Yes that was to bring this suit. I understood that there could be two cases of it. Yes I understood that this case was to be a civil suit and another a criminal case. No I did not go out there to persuade him to bring a civil suit. I did tell him he could do it. Yes I was working for Wm. Connolly at the time I observed the boy's conduct and put the date of it down. From the first time that I noticed the boy there in Hico, together with the time I watched him and then until I got through with Mr. Chesley, the County Attorney, about the matter, I had taken off about half a day from my work. Yes I put in that time there spying around. As well as I remember the first time in the day I saw the boy was about one o'clock,—it might have been a little before that time, but it was right after I come back from dinner. At that time I had an idea that he was drinking,—he did not show any appearance of being drunk though at that time. The first time on that day that I saw him I saw him ride up and go into the saloon. No when he went in there the first time there was no indica-
28 tion that he was drunk. No as he come out the first time I could not discover any change in him. The first time I saw him I was in the millinery department of Wm. Connolly's store. It was right across the saloon from the street,—I suppose it is about sixty steps between them. No it is not straight across the street,—it is kinder catty cornered. I stood there in the door of Connolly's millinery department,—there were some ladies in there and I called Mr. Connolly's attention to it, and we were talking about it. I was not waiting on any customers then,,—I had just come in from dinner and I stood there and watched until my attention was called back in the store. I stood there and watched some fifteen or twenty

minutes to see if I could see him come out of the saloon. I could not see what the boy did after he entered the front door of the saloon, —Yes I think there were back doors to the saloon. Yes there is a side door to the saloon on another street. The boy came out the same way he went in. I do not know whether Cox or any of his bar tenders saw him in the house or not. All I know I saw him enter the front door, and he was out of my sight for at least fifteen or twenty minutes, for I watched for that purpose. No when he came out of there I could not discover any change in his condition. After he came out he got on his horse and went down in front of Mr. Phillip's and got down and went in, and I am pretty sure that he bought a cow whip. My attention had been called back in the store and after I got through, I went around to the front door and was standing talking to Ed Gamble when he came on down to Phillip's, and I think got a cow whip and then came on up in front of the grocery store. Yes I was still watching him. I called Mr. Welch's attention to it, and the boy went to the saloon and went in again and when he did I began to discover then that he was under the influence of whiskey. No his riding before that had not indicated that he was drunk. He got the beer and put it in the saddle pockets the second time I saw him go in there. When he went back the second time I was standing at the Southeast corner of Mr. Connolly's store where I could see up the street. I saw the boy ride up from Phillip's and ride up to the saloon and get down and go in,
29 and when he come out of the saloon the second time he had two bottles of beer, and he put one in each one of his saddle pockets. Myself and Mr. Welch stayed there twenty or thirty minutes watching him. Yes he was able then to get on his horse himself. He talked a little loud and made a motion to holler, and got on his horse and called Jno. Hill pretty loud and I told Jno. Hill "you ought to try to get Will to go home." He talked to him and we stood and watched him, until he went back in the saloon and then I did not see him any more for a little while, and that was when I went home. He come out of the saloon about that time, and Mr. Gamble talked to him and got him on his horse, and he went up the road ahead of me in a lope. Yes I knew him well, and I knew his father well. The reason I did not interfere with him and keep him out of there was that I preferred the law to attend to such as that. I had no right to go into any man's house and interfere. Yes I saw him around on the street a time or two as I have stated and knew he was getting drunk, but I did not think I was the right man to interfere with him. Yes I simply went from room to room of the Connolly building and out of the streets and watched him. No I did not see any one sell him anything in the saloon. I do not know whether he set down in there or not. Yes he might have walked out of the saloon at the side door. No I could not see in the house. My estimate of the time, is just simply an estimate. I am not extraordinarily anxious that the plaintiff should win in this suit,—all I want to see is the right,—and for the law to be carried out. Yes I think it was right for me to take up the time while I was there employed by Mr. Connolly in watching this boy as I did. I asked Mr. Connolly's permission, and he granted it. I suppose

I must have put in an hour and a half or maybe two hours there that evening watching him. I am satisfied I paid particular attention to the matter there for at least two hours. No I did not go to the boy and say anything to him. Yes I saw Anderson Gamble trying to get him on his horse and get him off home. I never saw the boy there drunk before or since then. Of course I do not know what was in the beer bottles he brought out and put in his saddle pockets, but I think I know what a beer bottle is. Of course if he had
30 those beer bottles filled up with water I could not have told it from where I was. But I am sure it was beer in them as far as that is concerned,—I did not see or taste it, but I am sure it was beer. Yes I am sure it was beer by the looks of it. The first time I saw the boy was right close to one o'clock. When he went out of town it was late in the evening,—I saw him when he was leaving town,—the second time I saw him that evening was between 2:30 and three o'clock. I must have watched him then for twenty or thirty minutes and then he went back into the saloon, and when he went in there the last time, I did not see him come out, but I saw his horse several times, and I watched pretty close. When I started home late that evening I saw him come out of the saloon, and there were two or three trying to get him to go home. Anderson Gamble was the *was the* man that got him started off home. He had been in the saloon that time a long time before he come out. No I did not see him in the saloon. I merely saw him go in and come out. More than that I do not know. That is all that I can testify to,—that I saw him go in and come out as I have stated.

Re-examined by the PLAINTIFF:

At the time I went with Mr. Chesley up to see Mr. Thompson about this matter Mr. Chesley was then County Attorney of Hamilton County. I understood that the State could prosecute a suit about the matter. I went up to Mr. Thompson's with Mr. Chesley and introduced Mr. Chesley to him, and told him that Mr. Chesley was County Attorney, and that I claimed to be a law abiding citizen, and that Mr. Chesley did not know the way up to his house, and I come along with him, and I told him what had happened in Hico about his boy, and told him that Mr. Chesley could tell him what the law was about it, and he could do just as he pleased about it, and I then asked the boy several questions in their presence, and left matters with Mr. Thompson and Mr. Chesley. I saw the boy on the day he was in Hico go into that saloon three times. The first time I saw him go in when I was in the millinery department of Connolly's store, and Mr. Connolly stood there a good little while watching, and I was there fifteen or twenty minutes. The second time Mr. Welch and I stood at the corner about twenty or thirty
31 minutes watching him, I am sure it was thirty minutes. The third time when I saw him go in I stood there ten or fifteen minutes, and it was not more than an hour or such an matter until I started home, and about the time I started home he come out of the saloon.

Cross-examined by DEFENDANTS:

When I went up there with Mr. Chesley I understood he was going up there to investigate the matter. No Mr. Thompson does not live in this County,—he lives in Erath County. No I did not understand that Mr. Chesley could prosecute Erath County cases, but I went to Erath County with him to see a man who had a case in this County. I was satisfied that there would be two cases brought about it.

Re-examined by the PLAINTIFF:

Yes of course I understood that Mr. Chesley could prosecute any suit that arose in Hamilton County.

Testimony of J. E. Welch.

J. E. WELCH, a witness for the plaintiff testified:—

My name is J. E. Welch. I live in Hico Texas, and have lived there about twelve years. I was there about May 30" 1902. I knew the plaintiff, W. B. Thompson, and his son W. W. Thompson. I saw him in Hico about May 30" 1902. I saw him on the streets in Hico. When I saw him Mr. J. T. Adams was with me. On that day I saw W. W. Thompson go into P. O. Cox's saloon. Yes I saw him come out of that saloon. From the time he went in there until he come out was about ten or fifteen minutes. At that time I was in Connolley's millinery establishment. I saw him after that. At that time I was in front of Mr. Connolley's house on the corner there. I saw him go back into Cox's saloon that time. Yes I saw him come out. It was about twenty five or thirty minutes from the time he went in until he come out. I saw him again after that. I saw him get on his horse and ride in front of Mr. Connolly's store. I observed his saddle pockets then,—he had two bottles in them. They were round bottles. He brought the bottles out of the saloon with him and put them in his saddle pockets, and after that I saw them in the saddle pockets. I saw him ride down about in
32 front of Phillip's and then I did not see him any more. Yes I observed his general appearance at the times I have stated. I observed his size and conduct. From my observation of him I would not have taken him to be twenty one years old at the time. I had not seen him before that day.

Cross-examined by DEFENDANTS:

It was along about two or three o'clock in the day when I first saw this boy. Yes Jno. Adams and myself were in Connolly's millinery establishment. John Adams first called my attention to the young man. There was nothing unusual then in his appearance only going into the saloon. No I could not and did not see him after he entered the door. No I do not know whether he saw any one or any one saw him inside the saloon or not. It was about ten or fifteen minutes before he come out. No I do not know what was being carried on in the saloon at that time. No I could not see

whether he bought anything or not after he went in there. I think there is a side door and a back door to that saloon. He could have gone out at either of those doors and me not have seen him. Some little bit after that we were around on the corner by Mr. Connolly's store, and he went in again and we talked about it. I think about half an hour intervened between the first time I saw him come out and the second time I saw him go in. When I first saw him he was walking. I could not say that there was any one with him, for I do not remember. There were several around there. Yes something like a half hour after that I saw him go in the second time. He was on his horse when he come up that time. I do not remember from what direction he come,—he just rode up and hitched his horse and went in the saloon. There were several present about the saloon, but I do not remember any of them. Mr. Adams and I were standing about Connolly's corner when we saw him ride up there the second time. The saloon is diagonal across the street from that corner,—I do not know the distance. It was about twenty five or thirty minutes from the time he went in then until we saw him come out. Mr. Adams and I did not do anything during that time only stand there and talk. No I could not see him after he went into the saloon,

33 No I do not know whether he got anything from any one in there or not. No Ido not know whether or not he went out at the back or side door,—I could not have seen him if he did. All I can say is that I saw him go in the main front door and then saw him come out the same door in about twenty five or thirty minutes. I could not tell from his actions when I saw him then whether or not he was under the influence of whiskey,—he was too far from me,—that was the first time, and he was down on the ground going into the saloon. When he come out of the saloon and put the bottles in his saddle pockets he acted like he was drinking,—he talked a good deal like a drinking man and when he got on his horse he reeled in his saddle,—he was going on like a drunk man. Yes I heard him call *Jon.* Hill. He did not stay there in front of Connolly's store over two or three minutes. He then went towards Mr. Phillip's. I could not tell whether he got off his horse there or not,—I lost sight of him about the time he got down there. I quit watching him, for I thought I had seen about enough of him. I did not see Anderson Gamble start him home. No if the boy had made a statement in writing to me that he was twenty one years old on that occasion I would not have believed it,—he looked to be a boy all the time.

Re-examined by the PLAINTIFF:

When I saw him come out of the saloon he come out the same way that he went in.

Testimony of T. S. McKinley.

T. S. MCKINLEY, a witness for the plaintiff testified:—

I was formerly Sheriff and Tax Collector of this County. I know P. O. Cox, one of the defendants in this suit. I remember the cir-

cumstance of this case being tried here before. I had a conversation with P .O. Cox about this case before the first trial. I think the conversation occurred in Main & Chesley's office. He made a statement to me with reference to how many times young Thompson had been in his saloon that day before he got him to sign a statement. He said that he had been in his saloon three or four times that day before he got him to sign the statement. He said he was in there at least eight or ten times that day.

Plaintiff rests.

34 *Testimony of John May.*

JOHN MAY, a witness for the defendants testified:—

M name is John May. I live at Comanche Texas. In May 1902, I lived in Hico Texas, and was tending bar for Cox & Co. I remember the circumstance of a young man named Thompson coming into the saloon about the latter part of May 1902, while I was bar tender in there. When he first come in I asked him if he was twenty one years old. He said that he was. There was another fellow with him,—I think his name was McFadden. He said 'yes that is right,' or something like that. As well as I remember I sold him some beer. From his appearance and from his statement I believed that he was twenty one years old. After he drank the beer he went out. I do not remember at which door he come in or at which one he went out. In a short time he come back again. As well as I remember the same man was with him this time. I believe I asked him again this time if he was twenty one years old, and he claimed that he was twenty one the same as he did before,—I asked him that once or twice,—I won't be sure about that. Mr. Cox told me not to sell any minor whiskey. After he told me and after the other man told me he was twenty one I believed that he was. I could not say positively how many times he came in there that day,—he came in several times. Later on Mr. Cox drew up a statemen and wanted him to sign it and I believe he refused to sign it at first, and later on signed it as well as I remember. It was in the evening some time when Mr. Cox presented him the statement to sign. I did not at any time see him sitting around there. I do not think he sit down while he was in the saloon,—if he did I did not see him. No I can't tell you how many times he come in there that day. I do not remember whether he bought any whiskey that day or not,—he might have drank whiskey part of the time. As well as I remember he carried some bottle beer off with him when he started home,—I think he put it in his saddle pockets. I do not remember how many bottles he had. Yes I had had experience before that as a bar keeper. From the young man's appearance, demeanor, and looks, and conduct, together with his statement to me that he was twenty one years old, I believed that he was twenty one years old.

35 Cross-examined by the PLAINTIFF:

I am not doing anything at Comanche now. The reason I asked his age when he came in, was that when a young looking fellow comes in it is natural to ask him his age,—if he is twenty one. I was a little bit suspicious when I first saw him come in. Yes I asked him his age on that account. Yes I believed I asked him if he was twenty one years old the second time he come back. Yes he told me then he was twenty one years old. Yes then Mr. Cox got suspicious and prepared a written statement for him to sign he refused to sign it, but later on signed it. Yes I testified once in this case before. I cannot say how long he stayed in there after he took his first drink,—he did not stay so very long. He stayed there at the bar a few minutes and was talk- to people in there,—I was busy though and did not pay much attention to him,—but he did not stay in there so very long. No he did not turn immediately around and walk out as soon as he got the drink,—he did not stay there though over three or four minutes. I can't tell you how many times he come in there that day. I guess he was in there as many as four of five time- during the day. Q. Each time he would come in there he would drink and stand around and talk? A. No- every time. Q. Sometimes he would do that? A. He did not stand around long. I do not remember exactly what I testified before,—I am just testifying as near as I can remember it now. Yes the young man did talk to some parties in there. No I am not certain as to how many time- he was in there that day,—he would come in and go out again. At that time I was employed by Cox as bar tender. Yes young Thompson paid for the drinks. The other fellow that was with him was named McFadden. I believe they kinder taken it time about in paying for the drinks. Yes I know that all of the drinks were paid for. I am not certain though that Thompson paid for all of them. When Cox got him to sign this statement he had been in there a short time that time, and then Cox went to him with the statement. After he signed that statement I think he went out again. After he signed that statement I do not know whether Cox cared if he stayed in there or not.—I
36 didn't if Cox didn't. After he made the statement if it was al-right with Cox it was al-right with me for him to stay in there. No I did not object to his coming in the house. I did not hear Cox object to it. I did not try to expel him from the house. I did not hear Cox try to expel him. I heard part of the conversation between Cox and Thompson when he got him to sign the statement. I did not hear Cox tell him that there were some people on the outside complaining, and if he would sign the statement it would save him. No I did not hear all the conversation. I was waiting on the bar.

Re-examined by the DEFENDANTS:

Certainly the reason I did not invite Thompson out the first time when he come in, was that he told me he was twenty one years old. Yes that time he stayed there at the bar a few minutes. I do not

remember whether he handed *me* the exact change or whether I had to make change. I do not remember what time in the day it was that Cox asked him to sign this statement,—it was sometime in the evening. We sold whiskey drinks there for a bit (12½ c.). Once in a while we sold it at 10c.,—if a man would lay down a dime we would take it. I expect we charged Thompson a bit a drink. It was pretty late in the evening when Thompson was in there the last time. I do not remember whether McFadden come back with him each time or not.

Cross-examined by the PLAINTIFF:

He did not get to talking very loud in the house. I do not remember that Mr. Cox went to him and asked him to get quiet. I do not know that he was very full that evening,—I have seen men lots fuller than he was,—I expect he was a little bit full. Yes he was in that condition when he left that evening.

Testimony of J. A. Gamble.

J. A. GAMBLE, witness for defendants testified:—

My name is J. A. Gamble. I live in Hico Texas. I have lived there for about twelve years. I remember about May 30" 1902 of seeing W. W. Thompson there in Hico in Cox's saloon. I saw him sign a statement in writing that day. That statement you
37 exhibit to me is the statement,—it was signed by me as a witness. Yes Thompson signed that statement. I had just stepped into the saloon, and soon after I went in Mr. Thompson come in, and when we walked in he asked me to go and take a drink with him, and I told him al-right and we walked to the bar and Mr. Cox called him back from the bar and said a few words to him, and he just turned around and remarked that he did not have to sign anything to get what he wanted to drink, that he could get it without signing anything, and Cox said 'well you can't get it here.' He said you can't get anything else here, or nothing else here without signing it,—that he did not know he was twenty one years old, or something to that amount. I think I asked Mr. Cox myself what it was and he said it was a certificate stating the young man's age. I told the boy 'if you are twenty one years old, there is nothing wrong in signing the statement, but if you are not I would not sign it.' He said 'O, hell, if that is all I will sign it, and walked back and signed his name to it, and Cox asked me and Farrow if we would witness it and we did. Thompson then walked back to the bar and we got the drink. He did not stay in there over ten minutes after that, if that long. I do not suppose we were in there over ten minutes, and Thompson then walked out to his horse he stood there about his horse for some ten or fifteen minutes, and then got on his horse and galloped off up the street and that was the last I saw of him. I observed the young man at the time of the signing of this statement, and from his appearance, demeanor and conduct, I believe- him to be over twenty one years old.

Cross-examined by the PLAINTIFF:

If he had not signed this statement, I would have just believed that he did not want to sign it. Just looking at the boy I would have taken him to be twenty one years old, independent of the statement. No he did not look to be as much as twenty five years old. Yes he looked young to be in a saloon. He was under the influence of whiskey when I saw him. Yes he was talking pretty loud. We did not talk more than two or three minutes after we drank, and he then went out of the house,—no one took him
38 out. I was there with him before we drank just a few minutes. I was renting the building to Cox then. I did not see the boy on any other occasion in that saloon that day. He and I drank whiskey together. I did not pay for it.

The defendant offered in evidence the following statement:—

Statement of W. W. Thompson Offered by Def'ts.

HICO, TEXAS, 190–.

"M..... to Favorite Saloon, Dr: Fine Wines, Liquors, and Cigars. Keg and Bottle Beer.

This is to certify that I am twenty one years of age, this the thirtyth day of May 1902.

W. W. THOMPSON.

Witness,
H. FARROW.
J. A. GAMBLE."

Testimony of J. W. Newsome.

J. W. NEWSOME, a witness for defendant testified:—
My name is J. W. Newsome. I live at Hico and except two years have lived here since 1893. I work for A. L. Phillips. I was acquainted with W. W. Thompson in May 1902. He was in the store that day and we dealt with him. From his manner, appearance, and general demeanor, on that day I would judge him to be twenty one years old. We sold him a buggy before that and he paid part of it and gave his note for the balance.

Cross-examined by PLAINTIFF:

We are very particular about not selling to a boy. Yes where we would sell a buggy and get all but $15.00 down we would still be very particular about selling to a boy. No we would not sell to a minor if he was to come in and pay all but $15.00 down,—our rules would not permit that. Mr. Gamble sold him the buggy,—he did not pay it all but $15.00. He paid $50.00 and the balance was $50.00, and he came in afterwards and paid all of the balance but $15.00. He paid all but $15.00 the day he was in town painting it

red. I would take the boy to be twenty two or three years old. Yes I used to be in the saloon business myself. I do not know
39 how old the boy was then. I did not ask him. I am pretty well acquainted in Hico. It seems to me like Cox was there a short time before he went into the saloon business. He come there from Comanche Texas. No he had not been a resident there. He come there just before he put in the saloon business.

End of the case.

Agreement of Att'ys to Statement of Facts.

We, Main & Chesley, Attorneys for the plaintiff, and Dewey Langford, Attorney for the defendants in the above entitled and numbered cause, hereby agree that the above and foregoing is a true and correct statement of the facts proved on the trial of said cause and respectfully ask that the same be approved and ordered filed as a part of the record in said cause.

MAIN & CHESLEY,
Attorneys for the Plaintiff.
DEWEY LANGFORD,
Attorney for the Defendants, P. O. Cox, Sam Levy, & W. M. Evans.

Judge's Approval of Statement of Facts.

Filed April 12", 1904.

I, N. R. Lindsey, Judge of the 52" Judicial District of Texas certify that I have examined the foregoing approved statement of facts, and that I find the same to be correct, and I approve the same and order the same filed as the statement of facts in said cause.

Witness my hand this April 9" 1904.

N. R. LINDSEY,
Judge 52" Judicial District of Texas.

No. 1336. The State of Texas *vs.* P. O. Cox *et al.* Statement of Facts. Filed April 12th 1904. R. C. Cornelius, Dist. Clerk Hamilton Co. Texas.

General Charge of the Court.

Filed March 22", 1904.

In the District Court of Hamilton County, Texas, February Term, 1904.

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

GENTLEMEN OF THE JURY: In this case, the State of Texas, sues the defendants, P. O. Cox, Sam Levy and W. M. Evans to recover statutory penalties for alleged breaches of the defendants P. O. Cox liquor dealer's bond.

(1.) The defendants in their answer deny all and singular the allegations in plaintiff's petition contained and further specially plead, that if P. O. Cox his agents or employees sold or gave intoxicating liquor or consented that intoxicating liquor be sold or given to W. W. Thompson that such sale or gift was made in good faith with the belief that said W. W. Thompson was of age, and that the seller had good grounds for such belief, and further plead that if the said W. W. Thompson ever entered and remained in the saloon of P. O. Cox, with the permission of P. O. Cox his agents or employees that *that* said W. W. Thompson, so entered and remained in the saloon of the said P. O. Cox, for the purpose of procuring intoxicants and that the said P. O. Cox his agents and employees believed in good faith that the said W. W. Thompson was then twenty one years of age, and had good grounds for said belief, and that the said W. W. Thompson entered and remained in said saloon, if at all, no longer that was reasonably necessary to procure said intoxicants.

(2.) You gentlemen of the jury, are the exclusive judges of the facts proved, of the credibility of the witnesses and the weight to be given to the testimony, but you are bound to receive the law from the court, which is herein given you and be governed thereby.

(3.) Within the meaning of this charge whiskey and beer are each intoxicating liquors.

(4.) Now, if you believe and find from a preponderance of the evidence that the defendant P. O. Cox, was, on or about the 30th day of May 1902, a licensed retail liquor dealer, and engaged in the retail liquor business, in Hico Hamilton County Texas, under the bond in evidence before you, and if you further believe from a preponderance of the evidence, that on *o*f about the 30th day of May 1902 the defendant P. O. Cox, his agents or employees knowingly permitted W. W. Thompson, to enter and remain in his P. O. Cox's saloon or house, said house being the house wherein the said P. O. Cox, was conducting the business of a retail liquor dealer, (if he was so) and if you further find from a preponderance of the evi-
41 dence that the said W. W. Thompson, was then and there under the age of twenty one years, and that the said entry

and remaining in said saloon, if any, by the said W. W. Thompson was without the consent of any person authorized to give consent to said entry and remaining in said saloon, then if you so believe from the evidence you will find for the plaintiff, under paragraph 3 of plaintiff's petition and assess plaintiff's damage at five hundred dollars for each time you find that the said W. W. Thompson was so permitted to enter and remain in said saloon or place of business of the said defendant P. O. Cox, not to exceed the number of breaches alleged in said paragraph 3 of plaintiff's petition.

(5.) If you do not so believe from the evidence you will find for the defendant on the issue of the said W. W. Thompson, entering and remaining in the saloon or place of business of the defendant P. O. Cox, and in this connection you are instructed. If you believe and find from the evidence that the said W. W. Thompson was on the 30th day of May 1902 a person under the age of twenty one years, and that he was on or about the said 30th day of May 1902 permitted by the defendant P. O. Cox, his agents and employees, to enter and remain in the saloon or place of business of the said P. O. Cox as alleged in plaintiff's petition but if you further believe and find from the evidence that the said W. W. Thompson entered said saloon for the purpose of procuring intoxicating liquor and that the said defendant P. O. Cox, his agents or employees, sold the said W. W. Thompson intoxicating liquors, but at the time said liquor was sold to him, the person selling said liquor to the said W. W. Thompson, did so in good faith believing at the time of said sale if any, that the said W. W. Thompson was then twenty one years of age, and that the person making said sale, if any, then had good grounds to believe that the said W. W. Thompson was twenty one years of age, and if you further believe from the evidence that the said W. W. Thompson, on said occasion did not remain in said saloon for a longer time, than was reasonably necessary under the circumstances, to procure said liquor; that is, if the said W. W. Thompson remained in said saloon for such a length of time only as was reasonably necessary, for him, under the circum-
42 stances, to purchase the liquor, drink and pay for the same, you will find for the defendants, on the issue of the said W. W. Thompson entering and remaining in said saloon, but you are further instructed in this connection, if you believe and find from the evidence that the said W. W. Thompson, after entering the said saloon of the said P. O. Cox, (if he did so) loitered or remained in said saloon with the knowledge and consent of the said Cox, his agents or employees for a longer time than was reasonably necessary, under the circumstances, for him to purchase drink and pay for the liquor for which he entered said saloon, and that he was then under the age of twenty one years, and that he entered said saloon, without the consent of any person authorized to consent to said entry, you will find for the plaintiff and assess the damage as hereinbefore directed.

(6.) Upon the issue of the sale by the defendant P. O. Cox, his agents or employees, of intoxicating liquors to the said W. W. Thompson, you are charged.

(7.) If you believe and find from a preponderance of the evidence, that after the defendant executed the bond in evidence before you and after the defendant P. O. Cox engaged in the business of a retail liquor dealer in Hico, Hamilton County Texas under said bond, (if he did so) that he the said P. O. Cox, his agents or empolyees sold in the saloon of the said P. O. Cox, intoxicating liquor to the said W. W. Thompson on or about the 30th day of May 1902, as alleged in plaintiff's petition and that said W. W. Thompson was then and there a person under the age of twenty one years, and that no person authorized to consent to said sale, if any, consented thereto, then if you so find from the evidence you will find for the plaintiff under paragraph 4 of plaintiff's petition and assess plaintiff's damage at five hundred dollars for each sale, not in any event to exceed the number of sales alleged in said paragraph 4 of plaintiff's petition. But in this connection you are instructed. If you believe and find from a preponderance of the evidence that the defendant P. O. Cox, his agents or employees sold intoxicating liquor to the said W. W. Thompson as alleged in plaintiff's petition,
and that the said W. W. Thompson was then a person under
43 the age of twenty one years at the time of said sale, if any,
but if you further believe from that evidence that the person making such sale did so in good faith with the belief that the said W. W. Thompson was then twenty one years of age and if you further believe from the evidence that such person making such sale, if any, then had good — for such belief, you will find for the defendants on the issue of the sale of intoxicating liquor to said W. W. Thompson.

(8.) If you find for the plaintiff you will state in your verdict the number of infractions of the bond in evidence before you, that you find, and assess the damage at five hundred dollars for each infraction you will also state what infractions (if any) you find, this is, if for entering and remaining so state and if for sale or sales so state, giving the number, if any, in each instance, but in the aggregate, you will not assess damage, if any, for more than four infractions.

N. R. LINDSEY,
Judge 52d Judicial Dist.

No. 1336. The State of Texas *vs.* P. O. Cox *et al.* General Charge of the Court. Filed Mch. 22d 1904. R. C. Cornelius, Dist. Clerk Hamilton Co. Texas.

Special Instruction Asked by Def'ts.

Filed Mch. 22d, 1904.

In District Court of Hamilton Co., Texas.

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

GENTLEMEN OF THE JURY: You are instructed that under the law in making a sale of beer or whiskey to the minor, if any was made by P. O. Cox or his agents or employees, there can be but one infraction of the bond: That is, if P. O. Cox his agents or employees sold intoxicants to the alleged minor under conditions that would be a violation of the terms of his liquor dealer's bond you could not, for the same transaction, find that there was a violation also if the condition of the bond for permitting the minor to enter and remain unless you should believe from the evidence that after procuring the whiskey or beer (if he did so) he then loitered or re-
44 mained in defendant Cox's saloon or place of business with the knowledge and consent of the said Cox, his agents or employés for a longer time than was reasonably necessary to procure said whiskey or beer.

N. R. LINDSEY,
Judge Presiding.

No. 1336. The State of Texas *vs.* P. O. Cox *et al.* Special Instruction asked by defts. Filed 22d day of Mch. 1904. R. C. Cornelius, Dist. Clerk Hamilton Co. Texas.

Special Instruction No. 1 Asked by Def'ts.

Filed Mch. 22", 1904.

In District Court of Hamilton Co., Texas.

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

Now comes the defendants by atty. and ask the Court to charge the jury as follows:—You are instructed that under the law in making a sale of beer or whiskey to the minor, if any was made, by P. O. Cox or his agents, or employés there can be but one infraction of the bond; that is if P. O. Cox, his agents or employés sold in-

toxicants to the alleged minor under conditions that would be a violation of the terms of his liquor dealer's bond you could not for the same transaction find that there was a violation also of the condition of the bond for permitting the minor to enter and remain.

DEWEY LANGFORD,
Att'y for Def'ts.

Refused, because this charge is given with modifiaction in the main charge.

N. R. LINDSEY,
Judge Presiding.

No. 1336. The State of Texas *vs.* P. O. Cox *et al.* Special Instruction No. 1, asked by defendants. Filed 22" day of, Mch. 1904. R. C. Cornelius, Dist. Clerk Hamilton Co. Texas.

45 *Verdict and Judgment.*

In District Court of Hamilton County, Texas, February Term, 1904.

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

Now on this 22nd day of March, 1904, this cause came on to be heard, and the plaintiff appeared in proper person and by attorneys, and also came the defendants in person and by attorney and both parties announced ready for trial.

The- came on to be heard the exceptions of the defendants general and special to the plaintiff's petition, and the Court having considered same and having heard the argument of counsel thereon, and being advised as to the law applicable thereto, overruled said general and special exceptions to which action of the Court in overruling same the defendants in open Court excepted.

Then came on to be heard the plaintiff's general and special exceptions to the defendants answer and the Court having heard and duly considered same, and the argument thereon, and being advised as to the law overruled the said plaintiff's exceptions to which action of the Court the plaintiff, in open Court excepted, and a jury having been demanded, a jury of twelve (12) men, to wit. A. D. Bullard and eleven others, were duly and legally drawn, sworn and empaneled to try this cause, and said jury having heard the evidence and the argument of counsel for both plaintiff and the defendants, and having read and received the charge of the Court together with the pleadings of the parties, retired to deliberate upon their verdict; and afterwards, to-wit, on the 23rd day of Mch. 1904, returned into open Court the following verdict which was duly and legally received and filed by the Clerk of this Court, to wit:—

"We, the jury, find for the plaintiff 3 infractions of the bond for

entering and remaining in said Cox's saloon, and assess the plaintiff's damage at Five Hundred Dollars in each, first, second and third infractions of said bond, and at $1500.00 in the aggregate.

A. D. BULLARD, *Foreman.*"

46 Wherefore, it is the opinion of this court that in accordance with said verdict of said jury, that the plaintiff, The State of Texas, should have and recover of and from the defendants P. O. Cox as principal, and Sam Levy and W. M. Evans as sureties jointly and severally the sum of $1500.00 and the costs of this suit.

It is therefore ordered, adjudged and decreed by the court that the plaintiff, The State of Texas, do have and recover of and from the defendants, P. O. Cox as principal and Sam Levy and W. M. Evans as sureties, jointly and severally the sum of $1500.00 damages for three infractions of the Liquor' Dealer's Bond sued on as found by the verdict of said jury, together with 6% interest thereon from this date, and for all costs in this behalf incurred, for which let execution issue against the said P. O. Cox, Sam Levy and W. M. Evans or against either of them.

Defendants' Motion for New Trial.

Filed Mch. 25th, 1904.

In the District Court of Hamilton County, Texas, February Term, 1904.

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

Now comes the defendants in the above styled and numbered cause by attorney and pray the court to set aside and hold for naught the verdict of the jury and the judgment of the court thereon rendered on to wit, the 23rd day of March 1904 and grant them a new trial, for the following reasons.

1st. The Court erred in overruling defendants' demurrer to plaintiff's petition to the effect that the section regulating the sale of liquor and prescribing the tax and penalty is unsonstitutional, construed in connection with Art. 5060*i*, in that said Art. exempts from the provisions of the statute people engaged in the same business, to wit, selling intoxicating liquors, provided they sell wine produced from grapes grown in this State by the seller. Because said act regulating the sale of liquor and providing a tax and penalty is unconstitutional and repugnent to the 14th Amendment of the Federal Constitution, providing that no State shall deny to any person within its jurisdiction the equal protection of the law. And the
47 effect of said act when construed in connection with said Art. 5060*i*, is to deny to persons within the jurisdiction of the State of Texas the equal protection of the law.

2nd. The Court erred in giving Paragraph No. four of his charge to the jury because said paragraph refers the jury to paragraph three of plaintiff's petition in assessing the damage if any they should find, instead of stating the law applicable in such contingency; and because said paragraph was probably harmful to the defendants in stating to the jury that they should not find a greater number of breaches than was claimed by plaintiff thus calling the special attention of the jury to the alleged breaches.

3rd. The Court erred in giving paragraph five of his charge to the jury because said paragraph informs the jury in effect that if the alleged minor entered and remained in the saloon only so long as was necessary to purchase the liquor, drink and pay for the same then they will find for the defendants because said defense is too restricting in that if said minor entered and remained for any legal purpose and remained only so long as was necessary then there would be no infraction of the bond and said charge was harmful and prejudicial to the defendants in view of the testimony to the effect that on one occasion the alleged minor talked with the said P. O. Cox in reference to signing a statement respecting his age. And said paragraph of said charge is erroneous and misleading in that the defense pleaded by these defendants was not clearly stated in an affirmative manner and because said charge is on the weight of the evidence.

4th. The Court erred in giving paragraph eight of the Court's instructions to the jury wherein the jury are instructed as to the form of their verdict should they find for the plaintiff because said instruction does not inform the jury how they shall frame their verdict should they find for the defendants and thereby the jury are probably led to believe that the court thought that they could in no contingency find for the defendants.

5th. The Court erred in not giving and in refusing special charge No. 1 asked by the defendants which is here referred to and made a part hereof, because said charge as requested by the defend-
48 ants was the law of the case.

Wherefore defendants pray that said verdict and the judgment thereon rendered be set aside and held for naught and that they be granted a new trial.

DEWEY LANGFORD,
Attorney for Defendants.

No. 1336. The State of Texas *vs.* P. O. Cox *et al.* Defendants' Motion for New Trial. Filed Mch. 25th 1904. R. C. Cornelius, Dist. Clerk Hamilton Co. Texas.

Order Overruling Motion for New Trial and Notice of Appeal and 20 Day Order within which to File Statement of Facts and Bill of Exception.

In District Court of Hamilton Co., Texas, February Term, 1904.

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

On this the 25th day of March 1904, came on to be heard and considered the motion of defendants to set aside the verdict and judgment in this cause rendered, on to wit, the 23rd day of March, 1904, and after hearing the reading of said motion and being advised of the law the same was in all things overruled and denied by the Court, to which action and ruling of the Court the defendants excepted and in open Court gave notice of appeal to the Court of Civil Appeals for the 3rd Supreme Judicial District of Texas, at Austin. And it is ordered by the Court that the parties herein be granted twenty days after the conclusion of the term to prepare and file statement of facts and bills of exception.

Supersedeas Bond.

Filed April 13th, 1904.

In the District Court of Hamilton County, Texas.

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

Whereas in the above styled and numbered cause, pending in the District Court of Hamilton County, Texas, and at a regular term of said Court to wit, on the 23rd day of March 1904, The State of Texas recovered judgment against the said P. O. Cox, Sam Levy and W. M. Evans for the sum of one thousand and five hundred dollars with interest thereon from the 23rd day of March 1904, at the rate
49 of six per cent. per annum, and all costs of suit (and whereas on the 25th day of March 1904, a motion theretofore filed by the said defendants P. O. Cox, Sam Levy and W. M. Evans praying for a new trial was overruled, to which action of the Court the defendants, P. O. Cox, Sam Levy and W. M. Evans then and there excepted and gave notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas, at Austin)

from which judgment and order the said P. O. Cox, Sam Levy & W. M. Evans have taken an appeal to the Court of Civil Appeals for the Third Supreme Judicial —, at Austin, Texas.

Now therefore we P. O. Cox, Sam Levy & W. M. Evans as principals and C. J. Swasey and W. J. Hefley as sureties, acknowledge ourselves bound to pay The State of Texas the sum of Three Thousand and Five Hundred Dollars.

Conditioned that the said P. O. Cox, Sam Levy & W. M. Evans appellants shall prosecute their appeal with effect, and in case the judgment of the Supreme Court or Court of Civil Appeals shall be against them, they shall pay its judgment, sentence or decree, and pay all such damages as said Court may award against them.

Witness our hands this 12th day of April, A. D. 1904.

P. O. COX.
SAM LEVY.
W. M. EVANS.
C. J. SWASEY.
W. J. HEFLEY.

STATE OF TEXAS, *County of Tarrant:*

I Jno. A. Martin, Clerk of the District Court, in and for Tarrant County, do hereby certify that the sureties on the within bond, are in my opinion, good and ample security for amount therein specified, and that I would accept and approve same if presented to me.

Given under my hand and seal of office at Fort Worth, Texas this 11- day of April 1904.

JNO. A. MARTIN,
Clerk District Court, Tarrant Co., Tex.

Approved this the 13th day of Apr. 1904.

R. C. CORNELIUS,
Dist. Clerk Hamilton Co., Texas.

50 No. 1336. The State of Texas *vs.* P. O. Cox *et al.* Supersedeas Bond. Filed Apr. 13th, 1904. R. C. Cornelius, Dist. Clerk Hamilton Co., Texas.

Assignment of Errors.

Filed June 15th, 1904.

In the District Court of Hamilton County, Texas.

No. 1336.

STATE OF TEXAS
vs.
P. O. COX ET AL.

Now Comes the defendants and assign the following errors in the above styled cause.

1. The court erred in its charge to the jury in permitting and

directing a recovery in favor of plaintiff on any phase of the case on a finding by the jury on a preponderance of the evidence, in that the recovery herein being a penalty and the action being one highly penal in its nature, it becomes and was necessary for the jury in order to find for the plaintiff on any phase of the case presented to find the facts warranting such finding to exist from the evidence beyond a reasonable doubt.

2. The court erred in the fourth paragraph of its charge and in the fifth paragraph in so far as it is in connection with the fourth in directing a verdict for plaintiff if the jury should find and believe from the preponderance of the evidence that the facts in said fourth and fifth paragraphs set out existed in so far as it submitted to the jury the issue as to whether or not P. O. Cox was on or about the 30th day of May, 1902 a licensed retail liquor dealer in Hico, Hamilton County, Texas, in that there is absolutely no scintilla of evidence warranting the submission of such issue, there being no proof of any kind, character or description by inference or otherwise in the evidence that any license was ever issued by any person to the said P. O. Cox or that he was a licensed retail dealer.

3. The verdict of the jury is contrary to the law and without evidence to support it, in that there is absolutely no evidence or scintilla thereof that P. O. Cox was ever a licensed retail liquor dealer in the city of Hico, Hamilton County, Texas, it appearing
51 that no license was introduced in evidence and that no proof of any kind was made to supply the failure to introduce the license.

4. The Court erred in directing a verdict for the plaintiff in any event under the evidence, for that there is no evidence or scintilla thereof going to show that P. O. Cox was ever a licensed retail liquor dealer in the city of Hico.

5. The court erred in the fourth paragraph of its charge and in the fifth paragraph in so far as it is in connection with the fourth in directing a verdict for plaintiff if the jury should find and believe from the preponderance of the evidence that the facts in said fourth and fifth paragraphs set out in so far as it submitted to the jury the issue as to whether or not P. O. Cox was on or about the 30th day of May, 1902 a licensed retail liquor dealer in Hico, Hamilton County, Texas, in that it appears from the pleadings, the only place in which a license is mentioned, that a license was issued to P. O. Cox & Co., a retail liquor dealer in Hico, Hamilton County, Texas, and while the pleadings allege that P. O. Cox was doing business under the name of P. O. Cox & Co. yet there is no scintilla of evidence to show or indicate that P. O. Cox was doing business under the name of P. O. Cox & Co.

6. The verdict of the jury is contrary to the law and the evidence in that there is absolutely no evidence to show that P. O. Cox was doing business in the name of P. O. Cox & Co., there being no evidence or scintilla thereof upon the subject in the record and every inference in the record that can be drawn upon the subject going to show that P. O. Cox & Co. was a firm composed of at least two persons.

7. The Court erred in its charge to the jury in assuming that P. O. Cox was doing business under the name of P. O. Cox & Co., for that there is absolutely no evidence in the record warranting the said assumption.

8. The Court erred in submitting to the jury in its charge continually and with reiteration the issue as to the entry of the said Thompson into the said saloon with or without the consent of some person authorized to give consent, for that the Court had
52 erroneously permitted the father of the said Thompson to testify that he did not give his consent to the said entry and the continual reiteration of the said issue had a tendency to direct the jury's mind unduly to the testimony of the father and had a tendency to cause them to give undue weight to the effect that the entry was made without the consent of the father and had a tendency to cause them to find for the plaintiff upon the issue of the entry and remaining to the injury of the defendant, and said issue which was immaterial and irrelevant was given undue prominence in the case and there being no dispute as to the facts of the said issue it in its nature must have injuriously affected the case of the defendant before the jury.

9. The Court erred in its charge to the jury wherein the jury is instructed as to the form of their verdict if they found for the plaintiff, in that the charge does not inform the jury as to the form of their verdict if they found for defendants, thereby probably leading the jury to infer or believe that the Court thought that in no contingency could they find for the defendants.

10. The Court erred in its charge in that the same is contradictory and confusing and in the nature thereof undoubtedly affected injuriously the cause of the defendants, in that in the fourth paragraph of its charge it instructs the jury directly to find for the plaintiff on the issue of the entry and remaining if they believed from the preponderance of the evidence that the defendant Cox or his agents knowingly permitted W. W. Thompson to enter and remain in his house or saloon wherein he was conducting the business of a retail liquor dealer if the said Thompson was then and there under the age of twenty one years, this paragraph being short, concise and complete within itself and without qualification. And in the fifth paragraph of the Court's charge which is quite lengthy the Court undertakes in some measure to avoid the effect of the fourth paragraph by charging the jury amongst other things that if the jury believes from the evidence that the said Thompson entered the said saloon for the purpose of procuring intoxicating liquors and that the same were sold to him and that the persons selling the same did so in good faith believing him to be twenty one years of
53 age and having good grounds for such belief and that the said Thompson did not remain in said saloon for a longer time than was necessary under the circumstances to procure said liquor that is to purchase drink and pay for same, that they should find for the defendant, but in the same paragraph of the same charge the converse of the proposition is given, making the fifth paragraph of the charge a complete charge in itself upon all phases

of the entry and remaining that could be submitted in this case and making it a complete exposition of the law of the same unless another assignment of error that we make herein should be well taken, and said fifth paragraph used no words purporting to qualify the fourth paragraph. The effect of the two charges is such that an absolute and positive irreconcilable conflict exists. The fourth paragraph directs a recovery absolutely without reference to any excuse and the fifth paragraph directs a recovery conditionally and deals with all phases of the situation. The contradiction and confusion are still further accentuated by the giving of the special charge asked by the defendants wherein the jury are told that a recovery can be had but for one infraction of the bond at one time.

11. The Court erred in permitting or directing a verdict in favor of the plaintiff herein in any event under the evidence, for that the evidence shows that the application made by P. O. Cox was for a license to do business at two separate and distinct places and the allegation that license was issued to do business at the place in the application mentioned shows that the license was void upon its face even though the Court should hold that it was necessary to introduce the license in evidence or make proof that the license was issued.

12. The Court erred in its charge in directing a recovery in favor of plaintiff in case the minor loitered in the saloon after purchasing and paying for the drink sold him in good faith with the knowledge and consent of Cox, in that under the charge in such case the entry must have been lawful and the recovery is permitted solely for unlawfully remaining without an unlawful entry.

13. The Court erred in its charge in directing a recovery in favor of plaintiff in case the minor loitered in the saloon after
54 purchasing and paying for the drink sold him in good faith with the knowledge and consent of Cox, in that it not being unlawful for a minor to enter and remain in a saloon for a length of time sufficient to purchase a drink and pay for same if the saloon keeper sells the same in the belief that the minor is twenty one years of age and has good grounds for such belief, it must result that the legislature contemplated that entry and remaining under such circumstances were not violations of the bond and that no recovery could be had for a remaining after entry under such circumstances.

14. The Court erred in that it rendered judgment against the defendants on said bond, for that the law requiring the giving of the same is unconstitutional being violative of Section 1 of Article 14 of the United States Constitution in that it is class legislation and also Article 3 of the bill of rights of the State of Texas.

15. The Court erred in that it rendered judgment upon said bond against the defendants for that same is violative of Section 8 of Article 1 of the Constitution of the United States, same being in restraint of interstate commerce.

16. The Court erred in that it submitted any issue of liability upon the bondsmen and the sureties in this case, for that the bond sued on is a statutory bond and is more onerous than same could be legally made and is more onerous than is required by law in that same is a joint and several obligation and binds the maker and

sureties thereon jointly and severally and their heirs, executors and administrators for the payment of same, whereas said bond being a penal bond all liability upon same if in conformity with the statute would cease upon the death of the maker thereof and could only be a joint bond and not a joint and several bond.

17. The Court erred in not sustaining the general demur-er to plaintiff's petition in that the law requiring a bond and imposing penalties on retail liquor dealers requires them to give a bond for the pursuit of their business, but does not require a bond of any other merchant and is therefore violative of the bill of rights of the State of Texas, the sale of intoxicants being legalized in this State.

55 18. The Court erred in that it overruled the general demur-er to plaintiff's petition and submitted any question to the jury as to recovering a penalty for no penalty could be recovered or imposed in the State of Texas unless for an offense defined by the written laws of said State and for which a penalty is affixed by law and there is no statute in this State defining it as an offense for a minor to enter and remain in a saloon and it not being so defined as an offense no penalty can be imposed therefor by requiring the giving of a bond.

19. The Court erred in that it rendered judgment in this case against defendants, for that entering and remaining by W. W. Thompson in the saloon though repeated several times is only an infraction of one of the conditions of the bond and the State can only recover once for any infraction of any one condition of the bond.

20. The Court erred in that it rendered judgment upon said bond, for that said bond is void in that same embraces among its conditions the giving of intoxicating liquors as well as making it a penalty to permit a minor to enter and remain in such place of business of P. O. Cox, whereas the caption of the act does not embrace nor purport to regulate the giving to minors or the entering and remaining of minors in saloons and is violative of Section 35 Article 3 of the Constitution of the State of Texas in that it does not express in the caption the purpose of the act and thereby makes the bond more onerous than the legislature under said act had authority to require of a retail liquor dealer.

ORRICK & TERRELL AND
DEWEY LANGFORD,
Attys. for Defts. P. O. Cox,
Sam Levy & W. M. Evans.

No. 1336. The State of Texas *vs.* P. O. Cox *et al.* Assignments of Error. Filed June 15th, 1904. R. C. Cornelius, Dist. Clerk Hamilton Co., Texas.

56 *Bill of Costs.*

No. 1336.

THE STATE OF TEXAS
vs.
P. O. COX ET AL.

Plaintiff and Defendant to Officers of Court, Dr. to Costs accrued in above entitled and numbered cause to:

Clerk's Costs.

1902.			
June		Filing Suit	.15
"		Docketing Cause	.20
"		Citation & 2 Copies to Tarrant Co.	1.75
"		" " 1 Copy to Hamilton	1.25
"		2 Copies of Petition	8.20
"	27	Filing Intgs.	.15
"	27	Commission to take Dep. of P. O. Cox	.75
"	27	Cert. Copy Intgs.	3.20
Aug.	11	Sub. 2 Witnesses	.25
"	23	" 5 "	.85
"	25	Filing Answers	.15
"	27	Sub. 2 Witnesses	.40
"	8	" 2 "	.40
"	18	4 Witness Certificates	2.00
"		Taxing Cost & 1 Copy	.25
1903.			
Mch.	Term	1 Cont.	.20
Sept.	"	1 "	.20
1903.			
Sept.	18	Filing 1 Paper	.15
"	19	2 Witness Certificates	1.00
"	16	Sub. 1 Witness	.25
1904.			
Feb.	24	Filing Intgs.	.15
"	24	Cert. Intgs. to P. O. Cox (2) Copies	2.50
"	24	Precept to serve & 2 Copies	1.75
"	26	2 Cert. Copies Intgs. to P. O. Cox D. & X.	3.90
"	26	Filing Cross Intgs.	.15
"	26	Commission to take Dep. of P. O. Cox	.75
		Amt. Ford	30.95

57 1904.

		Amt. Bro't For'd	30.95
Mch.	21	Filing 1 Paper	.15
"	22	" 1 "	.15
"	3	" 1st Amd. Ans.	.15
"	22	" 6 Papers	.90
"	25	" Motion for New Trial	.15

" 25	Docketing 1 Motion	.20
" 23	Final Judgment	1.00
" 23	Judgment Overruling Motion for New Trial	.75
" 22	6 Witness Certs	3.00
Apr. 12	Filing Statement of Facts	.15
" 13	" and Approving Bond	1.65
June 15	" Assignment of Errors	.15
" 17	Transcript of Record	$34.00
		$73.35

"Sheriff's Fees."

Serving Citation & Mileage	$ 1.50
" " " "	2.95
" Subpœna & "	2.70
" " 5 Witnesses	2.50
" " 2 " & Mileage	3.20
" " "	1.00
" " 1 "	.50
" Precept	.75
Jury Fee	.50
	$15.60

"Witness Fees."

J. T. Adams	5.64
J. E. Welch	5.64
Amt. Ford	$11.28
58 Amt. Brot. Ford	$11.28
W. W. Thompson	12.72
W. B. Thompson	12.72
W. W. Thompson	6.72
W. B. Thompson	6.72
W. B. Thompson	5.64
J. W. Newsome	1.00
J. A. Gamble	1.00
J. T. Adams	2.00
J. E. Welch	2.00
W. W. Thompson	5.64
	$67.24

Stenographer's Fee	$3.00

Recapitulation:

Clerk's Fees	$73.35
Sheriff's "	15.60

Witness "	67.24
Stenographer's Fee	3.00
Total	$159.19
By Cash (by Plff.)	104.84
Balance	854.35

Clerk's Certificate to Transcript.

THE STATE OF TEXAS, *County of Hamilton:*

I, R. C. Cornelius, Clerk of the District Court in and for the County of Hamilton, do hereby certify that the foregoing 56 pages contain a true and correct transcript of the record of all the proceedings had in this cause as the same appears of record and now on file in my office.

To certify which witness my hand and seal of this Court this the 17th day of June, A. D. 1904.

[SEAL.] R. C. CORNELIUS,
Clerk of the District Court of Hamilton County, Texas.

59 (Endorsed:) No. 3395. P. O. Cox *et al.* Appellants, *vs.* The State of Texas Appellee. From the District Court of Hamilton County. Applied for by D. Langford Attorney for Appellants on the 13th day of April, 1904, and delivered to D. Langford on the 17th day of June 1904. R. C. Cornelius Clerk. District Court Hamilton County. Filed in Court of Civil Appeals at Austin Texas, the 8th day of July 1904. R. H. Connerly, Clerk. Court of Civil Appeals 3rd Supreme Judicial District of Texas.

Opinion.

No. 3395.

P. O. COX ET AL., Appellants,
vs.
STATE OF TEXAS, Appellee.

Appeal from the District Court of Hamilton County.

This is a companion case to P. O. Cox *et al. vs.* W. B. Thompson, this day decided; and for the reasons stated in that case, the judgment in this case is affirmed.

Affirmed.

W. M. KEY,
Associate Justice.

(Endorsed:) With App. No. 4587. No. 3395 P. O. Cox *et al.*, Appellants, *vs.* State of Texas, Appellee. Appeal from Hamilton County. Opinion. Affirmed. Filed in Supreme Court Mar. 18 1905. F. T. Connerly, Clerk. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin Texas. Jan. 11, 1905. R. H. Connerly, Clerk. W. M. Key, Associate Justice.

60 *Judgment of the Court of Civil Appeals.*

Judgment of the Court of Civil Appeals, Rendered January 11th, 1905.

No. 3395.

P. O. COX ET AL.
vs.
THE STATE OF TEXAS.

Appeal from District Court of Hamilton County.

Opinion by Associate Justice Key.

This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of the court that there was no error in the judgment; It is therefore considered, adjudged and ordered that the judgment of the court below be in all things affirmed; that the appellee, the State of Texas do have and recover of and from the appellants P. O. Cox, Sam Levy and W. M. Evans, principals, and their sureties C. J. Swasey and W. J. Hefley the amount adjudged by the court below and all costs in this behalf expended, and this decision be certified below for observance.

Motion for Rehearing.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas, at Austin.

P. O. COX ET AL., Appellants,
vs.
THE STATE OF TEXAS, Appellee.

Now come the appellants herein and move the court to grant them a rehearing herein, and respectfully state to the court that as
61 grounds for rehearing these appellants assign the following to-wit:

1. The Court erred in holding that the Fourteenth assignment of Error was not well taken and in holding that the court below did not err in rendering judgment against the defendants, the appellants herein on the bond sued on, for that the law requiring the giving of the same is unconstitutional being violative of Section 1 Article 14 of the United States Constitution in that it is class legislation, and also violative of Article 3 of the Bill of Rights of the State of Texas.

2. The Court erred in holding that the First Assignment of Error was not well taken and in holding that the court below did not err in its charge to the jury in permitting and directing a recovery in favor of plaintiff, appellee herein, on any phase of the case on the finding by the jury on a preponderance of the evidence, in that the recovery

herein being a penalty and the action being one highly penal in its nature, it becomes and was necessary for the jury, in order to find for the plaintiff on any phase of the case presented to find the facts warranting such finding to exist from the evidence beyond a reasonable doubt.

3. The Court erred in holding that the Twelfth Assignment of Error was not well taken and in holding that the court below did not err in its charge in directing a recovery in favor of plaintiff, appellee herein, in case the minor loitered in the saloon after purchasing and paying for the drink sold him in good faith with the knowledge and consent of Cox, in that under the charge in such case the entering must have been lawful and the recovery is permitted solely for unlawful remaining without unlawful entry.

4. The Court erred in holding that the Thirteenth Assignment of Error was not well taken in that it held that the court below did not err in its charge in directing a recovery in favor of plaintiff in case the minor loitered in the saloon after purchasing and paying for the drink sold him in good faith, with the knowledge and consent of Cox, in that it not being unlawful for a minor to enter and remain in a saloon for a length of time sufficient to purchase a drink and
62 pay for same, if the saloon keeper sells the same in the belief that the minor is twenty one years of age and has good grounds for such belief, it must result that the legislature contemplated that entry and remaining under such circumstances were not violations of the bond, and that no recovery could be had for a remaining after entry under such circumstances.

5. The court erred in holding that the Eighteenth Assignment of Error was not well taken in that it held that the court below did not err in that it overruled defendant's general demur-er to the petition and submitted any question to the jury as to recovering a penalty, for no penalty could be recovered or imposed in the state of Texas unless for an offense defined by the written laws of said state and for which a penalty is affixed by law, and there is no statute in this state defining it as an offense for a minor to enter and remain in a saloon, and it not being so defined as an offense, no penalty can be imposed therefor by requiring the giving of a bond.

6. The court erred in holding that the Twentieth Assignment of Error was not well taken in that it held that the court below did not err in rendering judgment upon said bond, for that said bond is void in that same embraces among its conditions the giving of intoxicating liquors as well as making it a penalty to permit a minor to enter and remain in such place of business of P. O. Cox, whereas the caption of the act does not embrace nor purport to regulate the giving to minors or the entering and remaining of minors in saloons, and is violative of Section 35, Article 3, of the constitution of the State of Texas, in that it does not express in the caption the purpose of the act and thereby makes the bond more onerous than the legislature, under said act, had authority to require of a retail liquor dealer.

7. The Court erred in holding that the Second Assignment of Error was not well taken, in that it held that the court below did not err in the third paragraph of its charge and in the fourth paragraph

in so far as it is in connection with the third, in directing a verdict for plaintiff if the jury should find and believe from a preponderance of the evidence that the facts in said fourth and fifth para-
63 graphs set out existed, in so far as it submitted to the jury the issue as to whether or not P. O. Cox was, on or about the 30th day of May, 1902, a licensed retail liquor dealer in Hico, Hamilton County, Texas, in that there is absolutely no scintilla of evidence warranting the submission of such issue, there being no proof of any kind, character or description, by inference or otherwise, in the evidence that any license was ever issued by any person to the said P. O. Cox, or that he was a licensed retail dealer.

8. The court erred in holding that the Third Assignment of Error was not well taken in that it held that the verdict of the jury was not contrary to the law and without evidence to support it, in that there is absolutely no evidence or scintilla thereof that P O. Cox was ever a licensed retail liquor dealer in the city of Hico, Hamilton county, Texas, it appearing that no license was introduced in evidence and that no proof of any kind was made to supply the failure to introduce the license.

9. The court erred in holding that the Fourth Assignment of Error was not well taken in that it held that the court below did not err in directing a verdict for the plaintiff in any event under the evidence, for that there is no evidence or scintilla thereof going to show that P. O. Cox was ever a licensed retail liquor dealer in the city of Hico.

10. The court erred in holding that the Eleventh Assignment of Error was not well taken in that it held that the court below did not err in permitting or directing a verdict in favor of the plaintiff herein in any event under the evidence, for that the evidence shows that the application made by P. O. Cox was for a license to do business at two separate and distinct places, and the allegation that license was issued to do business at the place in the application mentioned shows that the license was void upon its face even though the court should hold that it was not necessary to introduce the license in evidence or make proof that the license was issued.

11. The court erred in holding that the Fifth Assignment of Error was not well taken in that it held that the court below did not
64 err in the fourth paragraph of its charge, and in the fifth paragraph in so far as it is in connection with the fourth, in directing a verdict for plaintiff if the jury should find and believe from the preponderance of the evidence that the facts in said fourth and fifth paragraphs set out existed in so far as it submitted to the jury the issue as to whether or not P. O. Cox was, on or about the 30th day of May, 1902, a licensed retail liquor dealer in Hico, Hamilton County, Texas, in that it appears from the pleadings, the only place in which a license is mentioned, that a license was issued to P. O. Cox & Co., retail liquor dealers in Hico, Hamilton County, Texas, and while the pleadings allege that P. O. Cox was doing business under the name of P. O. Cox & Co., yet there is no scintilla of evidence to show or indicate that P. O. Cox was doing business under the name of P. O. Cox & Co. and in holding in substance that the

question raised by this assignment could not be raised on appeal because not sufficiently made in the court below.

12. The court erred in holding that the Sixth Assignment of Error was not well taken in that it in substance held that the verdict of the jury was not contrary to the law and the evidence, in that there is absolutely no evidence to show that P. O. Cox was doing business in the name of P. O. Cox & Co., there being no evidence or scintilla thereof upon the subject in the record and every inference in the record that can be drawn upon the subject going to show that P. O. Cox & Co. was a firm composed of at least two persons, and in holding in substance that the question presented by this assignment could not be raised on appeal because not sufficiently raised in the court below.

13. The court erred in holding that the Seventh Assignment of Error was not well taken in that it held that the court below did not err in its charge to the jury in assuming that P. O. Cox was doing business under the name of P. O. Cox & Co., for that there is absolutely no evidence in the record warranting the said assumption, and in that it held in substance that the question presented by this assignment could not be raised on appeal because not sufficiently raised in the court below.

14. The court erred in holding that the Sixteenth Assign-
65 ment of Error was not well taken in that it held that the Court below did not err in that it submitted any issue of liability upon the bondsmen and *and* the sureties in this case, for that the bond sued on is a statutory bond and is more onerous than same could be legally made, and is more onerous than is required by law, in that same is a joint and several obligation, and binds the maker and sureties thereon, jointly and severally, and their heirs, executors and administrators for the payment of same, whereas said bond being a penal bond all liability upon same if in conformity with the statute would cease upon the death of the maker thereof, and could only be a joint bond and not a joint and several bond.

15. The court erred in holding that the Eighth Assignment of Error was not well taken in that it held that the court below did not err in submitting to the jury, in its charge, continually and with reiteration the issue as to the entry of the said Thompson into the said saloon, with or without the consent of some person authorized to give consent, for that the court had erroneously permitted the father of the said Thompson to testify that he did not give his consent to the said entry, and the continued reiteration of the said issue had a tendency to direct the jury's mind unduly to the testimony of the father, and had a tendency to cause it to give undue weight to the fact that the entry was made without the consent of the father, and had a tendency to cause it to find for the plaintiff upon the issue of the entry and remaining to the injury of the defendant, and said issue, which was immaterial and irrelevant, was given undue prominence in the case, and there being no dispute as to the facts of the said issue, it, in its nature, must have injuriously affected the case of defendants before the jury.

16. The court erred in holding that the Ninth Assignment of Error was not well taken in that it held that the court below did not

err in its charge to the jury wherein the jury is instructed as to the form of its verdict if it found for plaintiff, in that the charge does not inform the jury as to the form of its verdict if it found for defendants, thereby probably leading the jury to infer or believe that the court thought that in no contingency could it find for the defendants.

66 The court erred in holding that the Tenth Assignment of Error was not well taken in that it held that the court below did not err in its charge in that same is contradictory and confusing, and in the nature thereof, undoubtedly affected injuriously the case of the defendants, in that — the fourth paragraph of its charge it instructs the jury directly to find for the plaintiff on the issue of entry and remaining, if they believe from the preponderance of the evidence that the defendant, Cox or his agents, permitted W. W. Thompson to enter and remain in his house or saloon, wherein he was conducting the business of a retail liquor dealer, if the said Thompson was then and there under the age of twenty one years, this paragraph being short, concise and complete within itself and without qualification. And in the fifth paragraph of the court's charge, which is quite lengthy, the court undertakes, in some measure to avoid the effect of the fourth paragraph by charging the jury, amongst other things, that if the jury believes from the evidence that the said Thompson entered the said saloon for the purpose of procuring intoxicating liquors, and that the same were sold to him, and that the persons selling the same did so in good faith believing him to be twenty one years of age and having good grounds for such belief, and that said Thompson did not remain in said saloon for a longer time than was necessary, under the circumstances, to procure said liquor, that is to purchase, drink and pay for same, that it should find for the defendant, but in the same paragraph of the same charge the converse of the proposition is given, making the fifth paragraph of the charge a complete charge in itself upon all phases of the entry and remaining that could be submitted in this case, and making it a complete exposition of the law of the same unless another assignment of error that we make herein should be well taken, and said fifth paragraph uses no words purporting to qualify the fourth paragraph. The effect of the two charges is such that an absolute and positive irreconcilable conflict exists. The third paragraph directs a recovery absolutely without reference to any excuse, and the fourth paragraph directs a recovery conditionally, and deals with all phases of the situation. The contradiction and confusion are still further accentuated by the giving of

67 the special charge asked by the defendants, wherein the jury is told that a recovery can be had for but one infraction of the bond at one time.

18. The court erred in holding that the Nineteenth Assignment of Error was not well taken in that it held that the court below did not err in rendering judgment in this case against defendants, for that entering and remaining by W. W. Thompson, in the saloon, though repeated several times, is only an infraction of one of the

conditions of the bond, and the state can only recover once for any infraction of any one condition of the bond.

Wherefore for the manifest errors in the judgment of this honorable court the appellants respectfully pray that a rehearing be granted. And appellant would respectfully state to the court that the attorneys for the appellee herein are Maine & Chesley whose post-office address is Hamilton in Hamilton County, Texas, and they pray that notice of this motion be duly served on them as required by law, and that on hearing that a rehearing be granted herein as herein prayed by appellants.

DEWEY LANGFORD,
ORRICK & TERRELL,
Attorneys for Appellants.

(Endorsed:) Mo. 2105 P. O. Cox *et als. vs.* State of Texas. Appellants' Motion for Rehearing. With App. No. 4587. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Jan. 23, 1905. R. H. Connerly, Clerk. Filed in Supreme Court, Mar. 18, 1905. F. T. Connerly, Clerk.

Order Overruling Motion for Rehearing.

Order Made February 22nd, 1905.

Overruling Motion for Rehearing.

Motion 2105, No. 3395; P. O. Cox *et al vs.* State of Texas; Appeal from Hamilton County; Motion for Rehearing: The Motion is overruled.

68 *Application for Writ of Error.*

In the Court of Civil Appeals, Third Supreme Judicial District of Texas, at Austin.

P. O. COX ET AL., Appellants,
vs.
THE STATE OF TEXAS, Appellee.

Now come the appellants herein and apply to the Honorable Supreme Court of the State of Texas for the issuance of its writ of error to the said honorable Court of Civil Appeals of the Third Supreme Judicial District of the State of Texas, for that said Honorable Court of Civil Appeals in affirming the above styled cause committed manifold errors, which errors were duly called to the attention of said court on motion for rehearing, which said motion was by said court duly overruled. And the appellants herein would respectfully call to the attention of the Honorable Supreme Court and assign as error the action of said Honorable Court of Civil Appeals in the following particulars, to-wit:

1. The court erred in holding that the Fourteenth Assignment of Error was not well taken and in holding that the court below did not err in rendering judgment against the defendants, the appellants herein, on the bond sued on, for that the law requiring the giving of the same is unconstitutional being violative of Section 1 Article 14 of the United States Constitution in that it — class legislation, and also violative of Article 3 of the Bill of Rights of the State of Texas.

This is the companion case of the case of Cox *vs.* Thompson for which a writ of error is at this time being applied for.

In view of the very meager statement of the Court of Civil Appeals and the very short statement of facts that can be made to cover the whole case, we deem it proper for the convenience of the court to make the following short statement of the material facts in the case

69 There was absolutely no evidence that P. O. Cox was doing business under the firm name of P. O. Cox & Co., direct, indirect or inferential.

There was absolutely no evidence that P. O. Cox or P. O. Cox & Co. ever obtained a license to retail liquors, either direct, indirect or inferential.

The application was put in evidence and will be referred to under proper assignment.

The bond was introduced. It was the ordinary form of liquor bond except the place of business is left blank, and was a joint and several obligation, binding the heirs, executors and administrators of the principal and sureties. The plaintiff's evidence showed that, as a matter of fact, Thompson was a minor, and that he did not consent for defendant to sell to his son or to permit his son to enter and remain in the saloon.

That at the times alleged said minor did enter and remain as many as three or more times, and bought drinks and got intoxicated.

The evidence would warrant the conclusion of the jury that the minor loitered some minutes after taking his drinks.

The evidence of the defendants would have warranted a finding by the jury that the drinks were sold in good faith, and would have warranted a finding that his entering and remaining was for the purpose of getting drinks and that he did not loiter.

The evidence is voluminous but we think we have stated enough in our short summary for the court to grasp the case in the beginning, and hence omit all reference to detail and questions of credibility.

We think also that the charge of the court in so far as it is material to the questions involved should be set before the court, and in view of the fact that the said charge is set forth in full on page 4 *et seq.* of the brief, we think it will be more convenient for the court to read it as printed than to have it add- to the volume of this motion.

We would call the court's attention to our argument upon this proposition on page 44 *et seq.* of our brief in this cause as
70 well as also our argument on page 7 *et seq.* of the supplemental brief filed herein, and we feel that in addition to these arguments we ought to make to the court the following additional suggestions by way of argument.

In making this argument we recognize that this court has held in the case of Douthit *vs.* State that the case attempted here to be made is governed by the case of the American Sugar Refining Co. *vs.* Louisiana reported in the 176 U. S. page 89, and that this case is analogous to that and that the case of Connolly *vs.* Union Sewer Pipe Co. reported in the 184 U. S. page 640 does not govern.

Why this is so this honorable court in its opinion did not undertake to show.

In view of the fact that we cannot bring ourselves to believe that on a reconsideration of the questions involved that this court will finally hold the law to be as it did in the Douthit case, we feel constrained in this writ of error to make a few suggestions to the court, hoping that these suggestions in addition to the argument made in our briefs will present the point to the court in a new light.

In the first place we understand the law is that; by reason of our constitution every man enjoys the right to pursue the business of a retail liquor dealer as much so as the right to sell dry goods, where local option has not been put in force in the manner authorized by the constitution.

If this were not so, yet nevertheless the Supreme Court of the United States in two cases, to-wit Vance *vs.* W. A. Vandacook Co., 170 U. S. page 438 and Scott *vs.* McDonald, 165 U. S. 58-107 holds that the liquor traffic comes within the domain of trade and commerce and as such is entitled to the protection afforded by the constitution of the United States to trade and commerce.

With this preliminary statement, we would call the court's attention to the fact that if a parallel can be drawn between the Sugar Refining Co. case and this case it would seem that the parallel could only be drawn along the lines of the dissenting opinion of Mr. Justice McKenna in the Connolly case, and he does not undertake to point out in any clear manner how the two cases can be
71 parallel, nor does this court in anyway whatever point out where the parallel exists.

The consideration of the Sugar Refining Co. case shows that it was an act to levy, collect and enforce payment of an annual license tax on certain persons. That it had in view no other purpose than the purpose of taxation expressed in its title.

The exemption in that act applied to planters and farmers grinding and refining their own sugar and molasses and those who granulated syrup for other planters during the rolling season. The opinion in that case makes a distinction which can well be applied in this case and so nearly does it touch the identical question here raised, that we can truthfully say that were we now attacking our statute regulating the sale of intoxicating liquors only in so far as its features relating to taxation are concerned, that the exact question on which the distinction was made in the Sugar Refining Co. case would exist here. The decision in that case says, "The act is not only exempting planters who use their sugar in the manufacture of articles of a wholly different description such as confectionery, preserves or pastry or such as one which would exempt the farmer who devoted his corn or rye to the making of whiskey, while other manu-

facturers of these articles were subject to the tax. A somewhat different question might arise in such a case."

If in our attack upon the act involved in this case we had no other point of distinction between this case and the Sugar Refining Co. case, we think that a good point would be made, and that the very point having been suggested by the Supreme Court of the United States itself in the very case would be entitled, if not absolutely good, at least to the most careful consideration and that the profession would be entitled to have the reasons why such point did not constitute a good distinction pointed out to it. We know that there is no rule of law requiring this court to give its reasons for any of its decisions, but we believe that long custom and practice by the Judges of the Court has established something nearly akin to the rule for which we contend.

Whether the point suggested in the Sugar Refining Co. case is a good one or not, yet the vastness of the distinction between
72 that case and this, in our humble opinion, should be at once apparent to an appellate court, unless they follow the reasoning of Justice McKenna to the exclusion of the majority of the Supreme Court of the United States.

In the Sugar Refining Co. case it should be borne in mind that the basic principles upon which that case was decided are two. First, that it was purely a revenue act. Second, that from time out of mind it has been the policy of this government not only to classify for purposes of taxation, but to exempt producers from taxation of the methods employed by them to put their products upon the market.

It should also be borne in mind that that case itself goes on to point out that refined sugar is a natural and ultimate product of the cane and the various steps dealt with in the act are merely taken to perfect such product and are but incident to its original growth.

The gist of that decision is contained entirely in the foregoing semi quotation. Now wherein is it in any way analogous to this case?

Here we have an act which is entitled "An act to regulate the sale of spirituous, vinous or malt liquors or medicated bitters, to fix a tax upon all persons or association- of persons selling such liquors, to define the time and manner of collecting such tax, to fix penalties for the violations of this act, etc." First, the main purpose of the act is obviously a regulation of the liquor traffic. Second, the tax is imposed as an incident or step in the regulation.

In regulating the sale of liquors the most *or* stringent provisons are made, including amongst other things the requiring of a bond as the bond herein sued on, on which causes of action may arise to the extent of five thousand dollars on penalties, that is fines. This bond, it is useless for us to say, is most burdensome in its provisions and conditions as well as is also the act in many other particulars.

Now the question arises. Is an act providing for the regulation of a business in any way different from an act providing for the imposition of a license tax? It would certainly seem to us that if
73 the answer is not at once plainly apparent, the answer of the Supreme Court of the United States in the Connolly case would forever settle this question.

The Illinois anti-trust act was an act more nearly on a parallel with this case than was the Sugar Refining Co. case, for it regulated and penalized the doing of certain business in certain ways and had an exemption clause almost in exact terms like the exemption clause in our statute, and the language of the Supreme Court of the United States in dealing with that anti-trust act is in all of its parts so applicable to the question here presented that we feel that we would do our client an injustice did we not strongly urge upon this court a reconsideration of its expressed idea on the subject in the Douthit case.

There is in this case absolutely nothing which is similar to the Sugar Refining Co. case except the fact that a license tax is in both imposed and that omitting from our argument the taxation feature as we have not undertaken to attach the statute as unconstitutional in so far as it imposed the tax, we think that the only point of similarity has been entirely eliminated and leaves the two cases, to-wit this Sugar Refining Co. case, absolutely and utterly different cases in principle. If not, we have yet to see any reason pointed out in any opinion of any court which even with plausibility undertakes to show wherein the similarity exists.

It had occurred to us that the only two points upon which counsel could base an argument to sustain the constitutionality of the statute under consideration were, first, that the liquor traffic did not come within the domain of trade and commerce. Second, that the regulations contained in the act are within the police powers of the state to such an extent that they would not be interferred with by the Federal Courts. Both of these points can be sustained by citation of abundant authorities, and we would approach a submission of this question to this court with great fear as to the ultimate result were it not that upon both questions the Supreme Court of the United States, which is our court of last resort, has spoken in no un-
74 certain terms and in language that cannot be misunderstood.

The South Carolina cases hereinbefore cited absolutely dispose of the first question whatever may be the decision of other courts .n the United States or other decisions of the Supreme Court of the United States. The South Carolina cases are the latest utterances on the subject and until overruled constitute the law of the land in so far as an interpretation of the United States Constitution is concerned with reference to what comes within the domain of trade and commerce. Second, the Connolly case deals with the question of police power so clearly that he who runs may read, and in the face of that case it would unquestionably be far fetched to say that the exception herein complained of by reason of the police power vested in the state did not bring the statute in conflict with the constitution of these United States.

It may be that we are obtuse in being unable to accept as satisfactory to our minds the decision in the Douthit case, but we have not, and as no reasons were given by this court in that decision for its decision, so we are unable to suggest to our minds any satisfactory reason which occurred to the court for holding that that case, towit the Douthit case, was governed by the principles decided in the Sugar Refining Co. case.

We submit that as this court in the Shippers Compress Co. case felt bound to follow the Supreme Court of the United States in so far as the imposition of penalties under the anti-trust act was concerned, we would suggest that however much this court may be of opinion that the Connolly case is wrong in principle, which is evidently its opinion, yet they should accept it as the law of the land and from it as the law they should deduce their conclusions in dealing with cases of this class. We know that vagaries some time arise where courts accept as law decisions which they believe not to be the law, as for instance our decisions holding that the superior title is in the vendor of land sold on credit, but nevertheless as there, it sometimes becomes necessary for courts to accept those decisions as law which they do not believe to be the law, and we think now
75 that one of those occasions has arisen and that this court should accept the Connolly case as the law and apply the language used in that case to the points raised in this in an endeavor to keep as far as possible the decisions of our state from getting in such lamentable shape that no mind however great can reconcile them.

This is bound to be the result if in great questions like this we are compelled to accept the mere statement of the court that a proposition made comes within the principles decided in a certain case, when to our mind it is a matter of utter impossibility to figure out how such a proposition comes within such a case.

We insist so earnestly upon this point because so thoroughly are we convinced that we are right that until the question has been passed upon the very last court to which it can be taken under the law of the land, we shall not be satisfied and we deem it our duty to present to this court every argument that has occurred to us in order that it may have the same lights before it as the Supreme Court of the United States which must and will ultimately be called upon to decide this question.

2. The court erred in holding that the First Assignment of Error was not well taken and in holding that the court below did not err in its charge to the jury in permitting and directing a recovery in favor of plaintiff, appellee herein, on any phase of the case on a finding by the jury on a preponderance of the evidence in that the recovery herein being a penalty and the action one highly penal in its nature, it becomes and was necessary for the jury, in order to find for the plaintiff on any phase of the case presented, to find the facts warranting such finding to exist from the evidence beyond a reasonable doubt.

We would call the court's attention to our statement and argument upon this proposition on page 8 *et seq.* of our brief in this cause as well as also pages 6 and 7 of the supplemental brief filed herein. We would particularly call the attention of the court to the argument upon this proposition.

3. The court erred in holding that the Twelfth Assign-
76 ment of Error was not well taken and in holding that the court below did not err in its charge in directing a recovery

in favor of plaintiff, appellee herein, in case the minor loitered in the saloon after purchasing and paying for the drink sold him in good faith with the knowledge and consent of Cox, in that under the charge in such case the entering must have been lawful and the recovery is permitted solely for unlawful remaining without unlawful entry.

We would call the court's attention to our argument upon this proposition on page 19 of our brief in this cause. We would particularly call the attention of the court to the argument upon this proposition.

4. The court erred in holding that the Second Assignment of Error was not well taken, in that the court below did not err in the third paragraph of its charge and in the fourth paragraph in so far as it is in connection with the third, in directing a verdict for plaintiff if the jury should find and believe from a preponderance of the evidence that the facts in said fourth and fifth paragraphs set out existed, in so far as it submitted to the jury the issue as to whether or not P. O. Cox was, on or about the 30th day of May, 1902, a licensed retail liquor dealer in Hico, Hamilton County, Texas, in that there is absolutely no scintilla of evidence warranting the submission of such issue, there being no proof of any kind, character or description by inference or otherwise, in the evidence that any license was ever issued by any person to the said P. O. Cox, or that he was a licensed retail dealer.

We would call the court's attention to our statement and argument upon this proposition on page 12 *et seq.* of our brief in this cause.

We would call the court's particular attention to our argument bearing on this and the next five assignments of error on page 2 *et seq.* of our supplemental brief filed herein.

5. The court erred in holding that the Third Assignment of Error was not well taken in that it held that the verdict of the jury was not contrary to the law and without evidence to support it, in that there is absolutely no evidence or scintilla thereof that P. O. Cox was ever a licensed retail liquor dealer in the city of Hico, Hamilton
77 County, Texas, it appearing that no license was introduced in evidence and that no proof of any kind was made to supply the failure to introduce the license.

We would call the court's attention to our argument upon this proposition on page 14 of our brief in this case.

6. The court erred in holding that the Fourth Assignment of Error was not well taken in that it held that the court below did not err in directing a verdict for the plaintiff in any event under the evidence, for that there is no evidence or scintilla thereof going to show that P. O. Cox was ever a licensed retail liquor dealer in the city of Hico.

We would call the court's attention to our argument upon this proposition on pages 14 and 15 of our brief in this cause.

7. The court erred in holding that the Fifth Assignment of Error was not well taken in that it held that the court below did not err in the fourth paragraph of its charge, and in the fifth paragraph in so far as it is in connection with the fourth, in directing a verdict for

laintiff if the jury should find and believe from the preponderance f the evidence that the facts in said fourth and fifth paragraphs set ut existed in so far as it submitted to the jury the issue as to whether r not P. O. Cox was, on or about the 30th day of May, 1902, a censed retail liquor dealer in Hico, Hamilton County, Texas, in that t appears from the pleadings, the only place in which a license is mentioned, that a license was issued to P. O. Cox & Co., retail liquor dealers in Hico, Hamilton County, Texas, and while the pleadings llege that P. O. Cox was doing business under the name of P. O. Cox & Co., yet there is no scintilla of evidence to show or indicate hat P. O. Cox was doing business under the name of P. O. Cox & Co. nd in holding in substance that the question raised by this assignment could not be raised on appeal because not sufficiently made in he court below.

We would call the court's attention to our statement and argument upon this proposition on page 25 of our brief in this cause.

8. The court erred in holding that the Sixth Assignment of
78 Error was not well taken in that it in substance held that the verdict of the jury was not contrary to the law and the evidence, in that there is absolutely no evidence to show that P. O. Cox was doing business in the name of P. O. Cox & Co., there being no evidence or scintilla thereof upon the subject in the record and every inference in the record that can be drawn upon the subject going to show that P. O. Cox & Co. was a firm composed of at least two persons, and in holding in substance that the question presented by this assignment could not be raised on appeal because not sufficiently raised in the court below

We would call the court's attention to our statement and argument upon this proposition on pages 25 to 27 of our brief in this cause.

9. The court erred in holding that the Seventh Assignment of Error was not well taken in that it held that the court below did not err in its charge to the jury in assuming that P. O. Cox was doing business under the name of P. O. Cox & Co., for that there is absolutely no evidence in the record warranting the said assumption, and in that it held in substance that the question presented by this assignment could not be raised on appeal because not sufficiently raised in the court below.

We would call the court's attention to our statement and argument upon this proposition on page 26 *et seq.* of our brief in this cause.

10. The court erred in holding that the Eighth Assignment of Error was not well taken in that it held that the court below did not err in submitting to the jury, in its charge, continually and with reiteration, the issue as to the entry of the said Thompson into the said saloon, with or without the consent of some person authorized to give consent, for that the court erroneously permitted the father of the said Thompson to testify that he did not give his consent to the said entry, and the continued reiteration of the said issue had a tendency to direct the jury's mind unduly to the testimony of the father, and had a tendency to cause it to give undue weight to the

fact that the entry was made without the consent of the father, and had a tendency to cause it to find for the plaintiff upon the issue of the entry and remaining, to the injury of the defendant, and
79 said issue, which was immaterial and irrelevant, was given undue prominence in the case, and there being no dispute as to the facts of the said issue, it, in its nature, must have injuriously affected the case of defendants before the jury.

We would call the court's attention to our statement and argument upon this proposition on pages 15 and 16 of our brief in this cause.

11. The court e-red in holding that the Ninth Assignment of Error was not well taken in that it held that the court below did not err in its charge to the jury wherein the jury is instructed as to the form of its verdict if it found for plaintiff, in that the charge does not inform the jury as to the form of its verdict if it found for defendants, thereby probably leading the jury to infer or believe that the court thought that in no contingency could it find for the defendants.

We would call the court's attention to our statement and argument upon this proposition on page 17 of our brief in this cause.

12. The court erred in holding that the Tenth Assignment of Error was not well taken in that it held that the court below did not err in its charge in that same is contradictory and confusing, and in the nature thereof, undoubtedly affected injuriously the case of the defendants, in that the fourth paragraph of its charge it instructs the jury directly to find for the plaintiff on the issue of entry and remaining, if they believed from the preponderance of the evidence that the defendant, Cox, or his agents, permitted W. W. Thompson to enter and remain in his house or saloon, wherein he was conducting the business of a retail liquor dealer, if the said Thompson was then and there under the age of twenty-one years, this paragraph being short, concise and complete within itself and without qualification. And in the fifth paragraph of the court's charge, which is quite lengthy, the court undertakes, in some measure, to avoid the effect of the fourth paragraph by charging the jury, amongst other things, that if the jury believes from the evidence that the said Thompson entered the said saloon for the purpose of procuring intoxicating liquors, and that the same were sold to him, and that the person selling the same did so in good faith, believing
80 him to be twenty-one years of age and having good grounds for such belief, and that said Thompson did not remain in said saloon for a longer time than was necessary, under the circumstances, to procure said liquor, that is, to purchase, drink and pay for same, that it should find for the defendant, but in the same paragraph of the same charge the converse of the proposition is given, making the fifth paragraph of the charge a complete charge in itself upon all phases of the entry and remaining that could be submitted in this case, and making it a complete exposition of the law of the same unless another assignment of error that we make herein should be well taken, and said fifth paragraph uses no words purporting to qualify the fourth paragraph. The effect of the two charges is such that an absolute and positive irreconcilable conflict

ists. The third paragraph directs a recovery absolutedy without ference to any excuse, and the fourth paragraph directs a recovery nditionally, and deals with all phases of the situation. The con- adiction and confusion are still further accentuated by the giving f the special charge asked by the defendants, wherein the jury is ld that a recovery can be had for but one infraction of the bond one time.

We would call the court's attention to our statement and argument on this proposition on page 29 *et seq.* of our brief in this cause.

13. The court erred in holding that the Eighteenth Assignment f Error was not well taken in that it held that the court below did ot err in that it overruled defendant's general demur-er to the peti- ion and submitted any question to the jury as to recovering a enalty, for no penalty could be recovered or imposed in the state of exas unless for an offense defined by the written laws of said state nd for which a penalty is affixed by law, and there is no statute in his state defining it as an offense for a minor to enter and remain in saloon, and it not being so defined as an offense, no penalty can be mposed therefor by requiring the giving of a bond.

We would call the court's attention to our statement and argu- ment upon this proposition on page 35 *et seq.* of our brief in this ause.

14. The court erred in holding that the Twentieth As-
81 signment of Error was not well taken in that it held that the court below did not err in rendering judgment upon said bond, for that said bond is void in that same embraces among its conditions the giving of intoxicating liquors as well as making it a penalty to permit a minor to enter and remain in such place of business of P. O. Cox, whereas the caption of the act does not em- brace nor purport to regulate the giving to minors or the entering and remaining of minors in saloons, and is violative of Section 35, Article 3, of the Constitution of the State of Texas, in that it does not express in the caption the purpose of the act and thereby makes the bond more onerous than the legislature, under said act, had authority to require of a retail liquor dealer.

We would call the court's attention to our statement and argument upon this proposition on page 41 *et seq.* of our brief in this cause.

15. The court erred in holding that the Thirteenth Assignment of Error was not well taken in that it held that the court below did not err in its charge in directing a recovery in favor of plaintiff in case the minor loitered in the saloon after purchasing and paying for the drinks sold him in good faith, with the knowledge and consent of Cox, in that it not being unlawful for a minor to enter and remain in a saloon for a length of time sufficient to purchase a drink and pay for same, if the saloon keeper sells the same in the belief that the minor is twenty-one years of age and has good grounds for such belief, it must result that the legislature contemplated that entry and remaining under such circumstances were not violations of the bond, and that no recovery could be had for a remaining after entry under such circumstances.

We would call the court's attention to our statement and argu- ment upon this proposition on page 21 of our brief in this cause.

16. The court erred in holding that the Eleventh Assignment of Error was not well taken in that it held that the court below did not err in permitting or directing a verdict in favor of the plaintiff herein in any event under the evidence, for that the evidence shows that the application made by P. O. Cox was for a license to do business at two separate and distinct places, and the allegation that
82 license was issued to do business at the place in the application mentioned shows that the license was void upon its face even though the court should hold that it was not necessary to introduce the license in evidence or make proof that the license was issued.

We would call the court's attention to our statement upon this proposition on page 19 of our brief in this cause.

17. The court erred in holding that the Sixteenth Assignment of Error was not well taken in that it held that the court below did not err in that it submitted any issue of liability upon the bondsmen and the sureties in this case, for that the bond sued on is a statutory bond and is more onerous than same could be legally made, and is more onerous than is required by law, in that same is a joint and several obligation, and binds the maker and sureties thereon, jointly and severally, and their heirs, executors and administrators for the payment of same, whereas said bond being a penal bond all liability upon same if in conformity with the statute would cease upon the death of the maker thereof, and could only be a joint bond and not a joint and several bond.

We would call the court's attention to our statement and argument upon this proposition on page 32 of our brief in this cause.

18. The court erred in holding that the Nineteenth Assignment of Error was not well taken in that it held that the court below did not err in rendering judgment in this case against defendants, for that entering and remaining, by W. W. Thompson, in the saloon, though repeated several times, is only an infraction of one of the conditions of the bond, and the state can only recover once for any infraction of any one of the conditions of the bond.

We would call the court's attention to our statement and argument upon this proposition on page 38 *et seq.* of our brief in this cause.

And now having pointed out to the court the manifold and manifest errors of the honorable Court of Civil Appeals, appellants pray that the honorable Supreme Court will grant them a writ of error in this cause and reverse and render or remand the case as to it
83 may seem proper.

Appellants would state that the attorneys for the appellee are Maine & Chesley whose postoffice address is Hamilton, Texas.

DEWEY LANGFORD,
ORRICK & TERRELL,
Attorneys for Appellants.

(Endorsed:) App. No. 4587. P. O. Cox *et als. vs.* State of Texas. Application for writ of Error. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas. Mar. 15, 1905. R. H.

Connerly, Clerk. Filed in Supreme Court, Mar. 18, 1905. F. T. Connerly, Clerk. By J. S. Myrick, Deputy. Refused Orrick & Terrell.

Clerk's Office, Supreme Court.

I, F. T. Connerly, clerk of the Supreme Court of Texas, hereby certify that the above and foregoing 15 pages contain a true and correct copy of the petition for writ of error filed in this Court by P. O. Cox in application No. 4587, P. O. Cox *et als. vs.* The State of Texas.

Witness my hand and the seal of said Court, this the 10th day of April, A. D. 1905.

[SEAL.] F. T. CONNERLY, *Clerk.*

(Endorsed:) Filed in Court of Civil Appeals, Third Supreme Judicial District, Austin, Texas, Apr. 10, 1905. R. H. Connerly, Clerk.

Judgment of Supreme Court.

In Supreme Court of Texas, Third District.

P. O. COX ET AL.
vs.
STATE OF TEXAS.

MARCH 23RD, 1905.

This day came on to be heard the application of P. O. Cox *et al.* for a writ of error to the Court of Civil Appeals for the Third
84 District, and the same having been duly considered, it is ordered that said application be refused; that the applicants, P. O. Cox, Sam Levy and W. M. Evans and their Sureties W. J. Hefley and C. J. Swasey, pay all costs incurred on this application.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by the Supreme Court on the application for writ of error in the above styled cause.

Witness my hand and the seal of said court, this the 8th day of April A. D. 1905.

[SEAL.] F. T. CONNERLY, *Clerk,*
By J. S. MYRICK, *Deputy.*

(Endorsed:) Application No. 4587. P. O. Cox *et al. vs.* State of Texas. Copy of Judgment in Supreme Court. Application for Writ of Error Refused. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Apr. 8, 1905. R. H. Connerly, Clerk.

Bill of Costs.

Clerk's Office, Supreme Court.

No. 4587.

P. O. COX ET AL.
vs.
STATE OF TEXAS.

Certified Copy Bill of Costs, Supreme Court.

Filing Application	.50
Docketing Petition	.50
Entering Appearance of Counsel	.50
Filing two Briefs	.60
Filing Three Papers	.90
Entering Orders	.50
Entering Judgment on Application	1.00
Certified Copy of Judgment	1.00
Taxing Costs of Application	.50
Certified Copy Bill of Costs	1.00
Total	$7.00

85 I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and seal of said Court, at Austin, this the 8th day of April, 1905.

[SEAL.] F. T. CONNERLY, *Clerk.*

(Endorsed:) Application. No. 4587. Certified copy Bill of Costs in Supreme Court, Austin. P. O. Cox *et al. vs.* State of Texas. $7.00 Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Apr. 8, 1905. R. H. Connerly, Clerk.

Petition for Writ of Error.

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

P. O. COX ET AL., Plaintiffs in Error,
vs.
THE STATE OF TEXAS, Defendant in Error.

To the Honorable H. C. Fisher, Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas:

Your petitioners, P. O. Cox, Sam Levy and W. M. Evans, respectfully show that heretofore to-wit on the 22nd day of March, 1904

there was tried in the District Court of Hamilton County, Texas in the town of Hamilton, County of Hamliton, State of Texas, a case in which the State of Texas was plaintiff and P. O. Cox, Sam Levy and W. M. Evans were defendants.

The declaration of the plaintiff in said cause was a petition for the recovery of penalties against P. O. Cox as principal and Sam Levy and W. M. Evans as sureties for the violation by P. O. Cox of the conditions of his bond as a retail liquor dealer, namely in that he allowed W. W. Thompson, minor son of W. B. Thompson,

86 to enter and remain in his house or place of business for the selling of spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, 6 times on the 30th day of May, 1902. And also for selling and giving to W. W. Thompson, minor son of W. B. Thompson, six times intoxicating liquors upon said date and to recover the sum of $500 as a penalty for each time he entered and remained and $500 as a penalty for each sale or gift that was made to him of intoxicating lipuors in said place of business for the sale of spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, to be drunk upon the premises, a copy of which said laws and amendments thereto under which said suit was brought is hereto attached and marked Exhibit A. It also alleged that Cox was a duly licensed dealer and that his bond was given as required by law, said bond being the bond sued on.

Upon the trial of said cause in said city, your petitioners demurred both generally and specially, to plaintiff's said petition upon the following grounds among others to-wit:

A general demurrer, and special demurrer, because the act under which said suit was brought and under which said bond was required to be executed, was unconstitutional and violative of Section 1 of the Fourteenth Amendment to the Constitution of the United States; because same was class legislation and that it denied to the plaintiffs in error that protection of the laws given to other persons similarly situated in the state; because it deprived plaintiffs in error of their property without due process of law, for that under the statutes of the state of Texas it is provided that no person shall be punished in the State of Texas for any act or omission unless same is made a penal offense and a penalty affixed thereto by the written laws of the state and the recovery sought to be had was a recovery upon the bond that was a penalty and for an act or omission which was not defined by the statutes of the state of Texas and for the violation of which no penalty was affixed by the laws of the state of Texas; because the provisions of the act cast special burdens and penalties upon those engaged in the sale of wines made from other fruits than grapes and wines made from grapes not grown in the

87 State of Texas and wines made from grapes grown in the state of Texas while not in the hands of the manufacturer or producer thereof, as distinguished from those engaged in the sale of wines made from grapes grown in Texas while in the hands of the producer or manufacturers thereof, also because said act granted special privileges to the manufacturers or wines made

from grapes grown in the state of Texas while in the hands of the manufacturer or producer thereof as contra-distinguished from other people engaged in the handling of wines made from other fruits than grapes grown in the state of Texas while in the hands of the manufacturer or producer thereof and of wines made from grapes grown in the state of Texas while not in the hands of the manufacturer or producer thereof; because said act requiring such bond and prescribing penalties for the violation of its conditions in *in* effect deprives plaintiffs in error of their property without due process of law.

Which said demurrer was overruled and the case was tried and submitted to the jury on the charge of the court, and that thereafter on the 23 day of March 1904 a verdict was returned in said cause against the defendants finding three infractions of the bond by entering and remaining and assessed the damages at $500 for each entry and remaining, and judgment was accordingly entered against the defendants for $1500 and costs.

And thereupon said defendants who allege and represent to this court that they are citizens of the United States and of the State of Texas appealed from the decision of the said court to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, in which court among other things, it was assigned as error that the court below had erred in overruling defendants' general demurrer to the said petition and in submitting any question to the jury as to the recovering a penalty for the violating the conditions *if* said bond for that no penalty could be recovered or imposed in the State of Texas unless for an offense defined by the written laws of said state and for which a penalty is affixed by law, and that there was no statute in the state defining it as an offense for a minor to enter and remain in the saloon and no penalty could be im-
88 posed and recovered therefor by requiring the giving of a bond. And also assigned for error that the court erred in giving judgment against defendant on said bond, for that the law requiring the giving of the same and giving a recovery thereon is *in*constitutional being violative of Section 1 Article 14 of the United States Constitution, and by appropriate propositions thereunder raised the question of the constitutionality of said act as tested by the Constitution of the United States Section 1 Article 14 of the Amendment thereto.

That upon the trial of the said cause in the Court of Civil Appeals for the Third Supreme Judicial District of Texas, the judgment of said court below was affirmed and the objections urged against the validity of the statute requiring retail liquor dealers to give bond in the manner prescribed by the statute were considered and all overruled, and especially the one which urged that the statute referred to is obnoxious to the Fourteenth Amendment of the Federal Constitution as construed in the case of Connolly *vs.* Union Sewer Pipe Co. by the Supreme Court of the United States. That by said court is was adjudged that the provisions of Chapter A -1 Title CIV of the Revised Statutes of the State of Texas and the amendments thereto Chapter 158 of the Acts of the Legislature of 1897 of the general laws

of said state which made it unlawful for any person to engage in the sale of spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, to be drunk on the premises, until he should pay the occupation tax levied under said law and enter into a bond in the sum of five thousand dollars with at least two good, lawful and sufficient sureties payable to the state of Texas, and to be approved by the County Judge, conditioned that said person, firm or association of persons so selling spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication in any quantity to be drunk on the premises, shall keep an open, quiet and orderly house or place for the sale of spirituous, vinuous or malt liquors or medicated bitters capable of producing intoxication, that such person, firm or association of persons or his agent or employé will not
89 sell or permit to be sold in his or their place of business, nor give or permit to be given, any spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication to any person under the age of twenty-one years, or to a student of any institution of learning or to any habitual drunkard or to any person after being notified in writing through the sheriff or other peace officer by the wife, mother, daughter or sister of the said person not to sell to such person, and that he or they will not permit any person under the age of twenty-one years to enter and remain in such house or place of business, and also further conditions not involved in this case which appear fully from an inspection of the copy of said act which is attached hereto and made a part hereof and which acts provide a penalty of $500 for the infraction of each of the conditions of said bond.

Art. 506001, of said act, however, exempts from the provisions of said act all persons selling wines manufactured from grapes grown in Texas while in the hands of the manufacturers or producers thereof, was a good and valid law and was not obnoxious to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

That said Court of Civil Appeals in effect held that same was not in conflict with the provisions of Section 1 of the Fourteenth Amendment of the Federal Constitution, in that the provisions of said act did not deprive citizens of the United States and of the State of Texas of rights, privileges and immunities secured to other citizens of the United States and of the State of Texas, nor of liberty or property without due process of law, nor of the equal protection of the law, all of which appears in the record, opinion and final judgment of the said Court of Civil Appeals affirming the judgment of the District Court of Hamilton County, Texas.

Your petitioners represent and show to the court that on the 15th day of March, 1905 a petition for a writ of error was filed in the said Court of Civil Appeals to the Supreme Court of the State of Texas and filed in the Supreme Court on March 18, 1905, and that in which said petition for writ of error said above mentioned questions were fully raised and discussed, and that the said Supreme Court
90 on the 22nd day of March, 1905 refused to grant your petitioners herein a writ of error to the Court of Civil Appeals for

the Third Supreme Judicial District of the State of Texas and refused to review said judgment of said Court of Civil Appeals. That said judgment of the Court of Civil Appeals thereby became and is a final judgment and is the judgment of the highest court of the state of Texas at law or in equity in which a decision in said suit could or can be had.

Your petitioners further show that the federal questions were made in said cause in to-wit as hereinbefore set out, and that said questions were also made in the petition for a writ of error to the Supreme Court of the State of Texas, which said writ was refused, and that the said judgment of said Court of Civil Appeals was in favor of the validity of the said law and bond herein before referred to, a copy of which is hereunto attached, in holding that same was not in violation of Section 1 Article 14 of the Amendment to the Federal Constitution. That the decision of said question was necessary to the judgment rendered.

Wherefore your petitioners present herewith an exemplified transcript of the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas in said case and pray that a writ of error to said Court of Civil Appeals of the Third Supreme Judicial District of the State of Texas be allowed, that citation be granted and signed, that the bond herewith presented be approved, that upon compliance with the terms of the statute in such cases made and provided that said bond and writ of error may operate a supersedeas and that the errors complained of may be reviewed in the Supreme Court of the United States and that the judgment aforesaid of said Court of Civil Appeals for the Third Supreme Judicial District of Texas be reversed.

SAM LEVY,
W. M. EVANS,
P. O. COX,
By DEWEY LANGFORD AND
ORRICK & TERRELL,
Attorneys and Counsel for Petitioners.

91 The writ of error as prayed for in the foregoing petition is allowed this 10th day of April, 1905, the writ of error to operate as a supersedeas and the bond for that purpose is fixed at the sum of Thirty-five Hundred Dollars.

Dated at Austin this 10 day of April, 1905.

H. C. FISHER,
Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

Filed in my office — day of ——, A. D. 1905.

——— ———,
Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

Title CIV. Chapter 1 A.

Revised Statutes of 1895. P. 1024.

Article 5060*a*. Hereafter there shall be collected from every person, firm or association of persons selling spirituous, vinous or malt liquors, or medicated bitters, within this state, an annual tax on each separate establishment as follows: For selling spirituous, vinous, or malt liquors in quantities of one gallon or less than one gallon, three hundred dollars; for selling such liquors in quantities of one gallon or more than one gallon three hundred dollars; provided, that in selling one gallon, the same may be made up of different liquors in unbroken packages, aggregating not less than one gallon. For selling malt liquors exclusively, fifty dollars; provided that nothing in this article shall be so construed as to exempt druggists who sell spirituous, vinous or malt liquors, or medicated bitters, on the prescription of a physician, or otherwise, from the payment of the tax herein imposed; provided further, that this article shall not apply to the sale by druggists of tinctures and drug compounds in the preparation of which spirituous, vinous, or malt liquors, or medicated
92 bitters, on the prescription of a physician, or otherwise, from the payment of the tax herein imposed; provided further, that this article shall not apply to the sale by druggists of tinctures and drug compounds in the preparation of which spirituous, vinous or malt liquors are used, and which compounds are not intoxicating beverages prepared in evasion of the provisions of this chapter.

Article 5060*b*. The commissioner's court of the several counties in this state shall have the power to levy and collect from every person or association of persons selling spirituous, vinous or malt liquors, or medicated bitters, a tax equal to one-half the state tax herein levied; and where any such sale is made in any incorporated city or town, such city or town shall have the power to levy and collect a tax upon such sale equal to that levied by the commissioners' court of the county in which such city or town is situated.

Article 5060*c*. Every person, firm or association of persons desiring to engage in the sale of spirituous, vinous, or malt liquors, or medicated bitters, shall before he or they commence the sale of such liquors or medicated bitters, file with the county clerk of the county in which he or they propose to sell such spirituous, vinous or malt, liquors, or medicated bitters, an application for license to engage in the sale of such liquors or medicated bitters. Said application shall be made on oath, on forms to be provided by the comptroller, and shall designate the place at which it is proposed to carry on the sale of such liquors or medicated bitters; if in a city, the street and number of the house shall be given, and the quantities in which he or they propose to sell, whether one gallon or more than one gallon, one gallon and less than one gallon, or whether they desire to sell malt liquors exclusively, and shall also state in said application whether or not said liquors are to be sold to be drunk on the premises; and shall pay to the collector of taxes of the county in which he or they propose to sell such spirituous, vinous, or malt liquors, or medi-

cated bitters, the entire annual tax herein levied, according to the quantities in which he or they propose to sell, and the entire
93 annual tax upon such business, as may be levied by the commissioner's court of such county, and file with the county clerk bond as required in article 5060*g* of this chapter. In case the selling of such liquors or medicated bitters be carried on in a city or incorporated town, he or they so selling shall, in addition to the state and county tax herein required to be paid, pay to the collector of taxes in such city or town such tax as may be levied on said business by such city or town, and all taxes herein levied shall be paid in advance. All licenses issued under the provisions of this chapter shall be posted by the licensee in a conspicuous place in his or their place of business, and on failure to so post such license, he or they so failing shall be considered as having no license.

Article 5060*d*. Upon filing the sworn application as provided in article 5060*c*, and paying to the collector the annual state and county tax herein provided for, and filing such bond as is required by article 5060*g*, the county clerk of said county shall issue to said applicant a license to sell spirituous, vinous, or malt liquors, or medicated bitters, at the place and in the manner and quantities set forth in the application, and no sale shall be made until such license is procured. The receipt of the tax collector shall be evidence of the payment of the tax. For issuing licenses herein provided for, county clerks shall be entitled to charge a fee of twenty-five cents for each license.

Article 5060*e*. No license shall be granted for a longer or shorter period than one year. The particular place and house in which the liquors are to be sold shall be designated in the license, and no license shall authorize any person to sell spirituous, vinous, or malt liquors, or medicated bitters, at any other place or house than that designated in the license; provided, that if any person or association of persons having a license to sell such liquors, desire to change his or their place of business, such change may be made by presenting the license to the clerk of the county and having the new place of business inserted therein, but in no case to admit of the temporary closing of one place of business to sell at another place.

94 Article 5060*f*. The county clerk in each and every county in this state shall, between the first and tenth days in each month, forward to the state revenue agent a sworn statement, giving the names of all persons who have filed applications for license during the preceding month, and the tax collector of each county shall keep a register in which shall be entered the names of all persons paying taxes under this chapter, with the date of payment, and shall, between the first and tenth day of each month, make to the state revenue agent a sworn report, giving the names of all persons who have paid a liquor tax during the preceding month, and the character of tax paid by each. The reports provided for in this article shall be made upon blank forms to be furnished by the comptroller.

Article 5060*g*. Any person, firm or association of persons desiring to engage in the sale of spirituous, vinous, or malt liquors or medicated bitters capable of producing intoxication, to be drunk on the premises, shall, before engaging in such sale, be required to enter

to bond in the sum of five thousand dollars; provided, however, at any person, firm or corporation of persons dealing exclusively malt liquors shall be required to give bond only in the sum of ne thousand dollars, with at least two good, lawful, and sufficient reties, payable to the state of Texas, to be approved by the county dge, conditioned that said person, firm or association of persons, selling spirituous, vinous, or malt liquors, or medicated bitters apable of producing intoxication, in any quantity, to be drunk on ne premises, shall keep an open, quiet and orderly house or place for ne sale of spirituous, vinous, or malt liquors, or medicated bitters apable of producing intoxication; and that such person, firm or ssociation of persons, or his or their agent or employé, will not sell or permit to be sold in his or their house or place of business, nor ive nor permit to be given any spirituous, vinous, or malt liquors, r medicated bitters capable of producing intoxication, to any person nder the age of twenty-one years, or to any student of any institu- on of learning, or to any habitual drunkard, or to any person after having been notified in writing, through the sheriff or other peace officer, by the wife, mother, daughter, or sister of the person not to sell to such person; and that he or they will not ermit any person under the age of twenty-one years to enter and emain in such house or place of business; and that he or they will ot permit any games prohibited by the laws of this state to be layed, dealt, or exhibited in or about such house or place of business; nd that he or they will not rent or let any part of the house or place n which he or they have undertaken to sell spirituous, vinous, or alt liquors, or medicated bitters capable of producing intoxication, n any quantity, to be drunk on the premises, to any person or per- ons for the purpose of running or conducting any game or games rohibited by the laws of this state; and that he or they will not dulterate the liquors sold by them in any manner, by mixing with he same any drug; and that he or they will not knowingly sell or give away any impure or adulterated liquors of any kind; which aid bond shall be filed in the office of the county clerk of the county here the business is conducted, and shall be recorded by such clerk n a book to be kept for such purpose, for which service the said lerk shall be entitled to a fee of seventy-five cents; which said bond nay be sued on at the instance of any person or persons aggrieved by the violation of its provisions, and such person shall be entitled o recover the sum of five hundred dollars as liquidated damages for each infraction of the condition of such bond, and the said bond shall not be void on the first recovery, but may be sued on until the full penal sum named therein shall have been recovered. In addition o civil proceedings for individual injuries, brought on said bond as above indicated, if any person, firm or association of persons shall violate any of the conditions of the bond herein required, it shall be the duty of the county and district attorneys, or either of them, to institute suit thereupon in the name of the state of Texas, for the use and benefit of the county, and the amount of five hundred dollars as a penalty shall be recovered from the principals and sureties upon

the breach of any of the conditions thereof; and whenever
96 the first or subsequent bond as required is exhausted by suit at the instance of individuals, or for the use of the county a new similar bond shall be given and approved before the dealer shall have the right to further pursue the business of a liquor seller; or in case suit is pending on any such bond, and the county or district attorney shall make and file an affidavit with the clerk of the county court that he believes the bond of the defendant will be exhausted by said suit, the clerk shall at once notify the liquor dealer thereof, and it shall be the duty of the liquor dealer, within twenty days from the time the bond is exhausted or, in other event, within twenty days from the time the notice is given, to give a new bond similar to the bond first given, to be approved in the same way; and until such new bond is given and approved, when it is required by this chapter, the liquor seller shall not have the right to further pursue the business of selling liquors; and any person, firm or association of persons who shall sell liquors, in any quantity, to be drunk on the premises, without giving the first bond, or the new bond, as required by this chapter, shall be deemed guilty of a misdemeanor, and on conviction shall be fined the same amount provided for in cases where no license has been obtained. An open house, on the meaning of this chapter, is one in which no screen or other device is used or placed either inside or outside of such house or place of business for the purpose of or that will obstruct the view through the open door or place of entrance into any such house or place where liquors are sold to be drunk on the premises. A quiet house or place of business, in the meaning of this chapter, is one in which no music, loud or boisterous talking, yelling or indecent or vulgar language is allowed, used or practiced, or any other noise calculated to disturb or annoy any persons residing or doing business in the vicinity of such house or place of busines, or those passing along the streets or public highways. By an orderly house is meant one in which no prostitute or lewd woman or women are allowed to enter or remain; and it is further provided, that said house must not contain any vulgar or obscene pictures. Any surety on such bond may relieve himself from further liability thereon by giving the principal in said bond notice in writing that he will no longer remain
97 as surety on said bond and by filing with the county judge an affidavit that such notice has been given, and if within five days after such notice if he fail to make a new bond, he shall cease to pursue said business until a new bond is given. And any person who shall continue to pursue said business after such affidavit is filed shall be guilty of a misdemeanor, and shall be punished as provided in cases where no license has been procured; provided, that where the sale is made in good faith, with the belief that the minor was of age, and there is good ground for such belief, that shall be a valid defense to any recovery on such bond.

Art. 5960*h*. An habitual drunkard, within the meaning of this chapter, is one who makes it a habit, or who habitually becomes intoxicated by the voluntary use of intoxicating liquors; and in all suits for the breach of such bond for unlawfully selling to an

habitual drunkard, the question whether or not such person is an habitual drunkard shall be determined by the court or jury trying such case, as any other fact.

Art. 5060*i*. The provisions of this chapter shall not apply to wines produced from grapes grown in this state, while the same is in the hands of producers or manufacturers thereof.

1897 General Laws of Texas. P/223

H. B. No. 686.

CHAPTER 158.

An Act to Amend the Law in regard to Taxation, and to Regulate the Sale of Liquor, by Amending Article 5060*a* and Article 5060*c* of Title 104, Chapter 1s of the Revised Civil Statutes of Texas, and Adding Article 5060*j* to said Chapter.

Article 5060*a*. Hereafter there shall be collected from every person firm, corporation, or association of persons, selling spirituous, vinous, or malt liquors, or medicated bitters capable of producing intoxication in this State, not located in any county, subdivision of a county, justice precinct, city or town, where local option is in force under the laws of Texas, an annual tax of $300 on each separate establishment, as follows: For selling such liquors or medi-
98 cated bitters in quantities of one gallon or less than one gallon, $300; for selling such liquors or medicated bitters in quantities of one gallon or more than one gallon, $300; provided, that in selling one gallon the same may be made up of different liquors in unbroken packages aggregating not less than one gallon; for selling malt liquors exclusively, $50. And there shall be collected from every person, firm or corporation or association of persons, for every separate establishment selling such liquors or medicated bitters within this State and located within a county, subdivision of a county, justice precinct, town or city, in which local option is in force under the laws, the sum of $200; provided, the same shall not be sold in such locality except on prescription and in compliance with the laws governing sales in such localities; provided, further, that nothing in this article shall be so construed as to exempt druggists who sell spirituous, vinous, or malt liquors, or medicated bitters capable of producing intoxication, on the prescription of a physician or otherwise in either locality as above set forth from the payment of the tax herein imposed; provided, further that this article shall not apply to the sale by druggists of tinctures and drug compounds, in the preparation of which said liquors or medicated bitters are used and sold on the prescription of a physician or otherwise, and which tinctures and compounds are not intoxicating beverages prepared in the evasion of the provisions of this chapter nor the local option law.

Article 5060*c*. Every person, firm, corporation or association of persons, desiring to engage in the sale of spirituous, vinous or malt

liquors, or medicated bitters capable of producing intoxication, in this State, as set forth in Article 5060*a* of this chapter, shall, before commencing the sale of such liquors or medicated bitters, file with the county clerk of the county on which he or they propose to sell the same, an application under oath, on forms provided by the Comptroller, and shall designate the place in which it is proposed to engage in the sale of such liquors or medicated bitters, if any city or town in which streets are named and houses numbered, the street and number of house shall be given, and the quantities
190 in which he or they propose to sell, whether one gallon or more, or one gallon and less than a gallon, or whether they desire to sell malt liquors exclusively; provided, in localities where local option is in force not more than one quart shall be sold at one time to the same person; and shall also state in said application whether said liquors or medicated bitters are to be sold to be drunk on the premises, or to be sold on prescription in a local option county, subdivision of a county, justice precinct, town or city; and shall pay to the collector of taxes of the county in which such sales are to be made the full amount of the annual tax herein levied, and such as may be levied by the commissioner's court of such county and the city or town in which sales are to be made; and shall file with the said clerk a bond as required by Article 5060*g* and 5060*j* of this chapter. In case the sales are to be made in a city or incorporated town, the taxes by such city or town shall be paid to the collector of taxes of such city or town. All taxes herein levied or which may be levied by a county, city or town, shall be paid in advance, and upon the payment of same and full compliance herewith, the county clerk of the county shall issue to the person, firm, corporation, or association of persons, a license as provided for in Article 5060*d* of this chapter, which said license and licenses or receipts for the tax or revenues issued by the United States shall be posted by licensee in a conspicuous place in his or their place of business, and on failure to so post such license or receipt, he or they so failing shall be considered as having no license and subject to all the pains and penalties as if no such license had issued.

(Endorsed:) P. O. Cox *et al.*, Plaintiffs in Error, *vs.* The State of Texas, Defendant in Error: Petition for Writ of Error. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas. Apr. 10, 1905. R. H. Connerly, Clerk.

100 *Assignments of Error.*

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

P. O. Cox, Sam Levy and W. M. Evans, Plaintiffs in Error,
vs.
The State of Texas, Defendant in Error.

Assignments of Error.

Now comes the plaintiffs in error, P. O. Cox, Sam Levy and W. M. Evans, and respectfully submit that in the record, proceedings and final judgment of the Court of Civil Appeals for the Third Supreme Judicial District of Texas for the State of Texas in the above entitled matter there is manifest error in this to-wit:

I.

The court erred in holding that the provisions of Chapter A–1 Title CIV of the Revised Statutes of the State of Texas and of the amendments thereto of the general laws of the state of Texas of 1897, Chapter 158 are not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, for that the state of Texas by and through the provisions of said Chapter A–1 Title CIV and the amendments thereto in Chapter 158 of the Acts of 1897, assume to and seek:

(1) To deprive the plaintiffs in error and certain other citizens of the United States of America and of the State of Texas of rights, privileges and immunities secured to other citizens of the United States and of the said state.

(2) To deprive plaintiffs in error and other citizens of the United States of their property without due process of law.

(3) To deprive and to deny to the plaintiffs in error and certain citizens and persons within the jurisdiction of the State of Texas the equal protection of the law.

101 II.

The court erred in holding that the provisions of said act do not deny to plaintiffs in error the equal protection of the law.

III.

The court erred in holding that the said act and amendments thereto and the authority exercised thereunder and the causes of action given thereby and the penalties imposed thereunder is within the police power of the legislature of the state of Texas, and that the State of Texas has the right to discriminate between persons engaged in the same class of business.

IV.

The court erred in holding that the provisions of said act and the amendments thereto do not unlawfully discriminate between those engaged in selling spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication or in the selling of wines manufactured from other fruits than grapes or in the selling of wines manufactured from grapes grown in Texas while not in the hands of the manufacturers or producers thereof, as contradistinguished from those engaged in the sale of wines manufactured from grapes grown in Texas while in the hands of the producers or manufacturers thereof, which latter class is exempt from giving bonds and from incurring penalties for violating the conditions thereof as provided for in said act.

V.

The court erred in holding that the provisions of said act did not cast special burdens upon those engaged in the sale of wines manufactured from grapes or other fruits or of spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication not cast on those engaged in the sale of wines manufactured from grapes grown in Texas while in the hands of the producers or manufacturers thereof.

VI.

The court erred in holding that the provisions of said acts are uniform in their operation throughout the state upon all citizens of the state similarly situated.

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VII.

The court erred in holding that said act does not grant special and exclusive privileges to certain citizens which it denies to plaintiffs in error and to other citizens of the state.

VIII.

The court erred in that it impliedly followed the doctrine laid down in the case of Douthit *vs.* State of Texas decided December 15, 1904 wherein the Supreme Court of this State refused to recognize the doctrine as laid down in the case of Connolly *vs.* Union Sewer Pipe Co. but followed in lieu thereof the doctrine announced in the case of the Louisiana Sugar Refining Co. *vs.* State of Louisiana, the doctrine announced in said latter case being purely upon a question of classification for taxation and was not applicable to the act herein complained of.

IX.

The court erred in holding that the provisions of said chapter and the amendments thereto of the Acts of 1897 are not in violation of Section 8, Article 1 of the Constitution of the United States which confers on Congress the exclusive power to regulate commerce among the several states.

X.

The court erred in holding said laws requiring the giving of said bond by retail dealers in spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, made such bond a valid obligation and that recovery of penalties thereon could be had against the plaintiffs in error, for that it operated to deprive the plaintiffs in error of their property without due process of law, in that the statutes of the state of Texas provide that no person can be punished in the state of Texas for any act or omission unless the same is made a penal offense and a penalty is affixed thereto by the written laws of this state, for that there is no law in the state of Texas making it a penal offense for a minor to enter and remain in a saloon and such act not being defined by the laws of the state
103 of Texas as an offense, no penalty could be imposed therefor by requiring the giving of a voluntary bond, the recovery upon said bond being recovered as a penalty.

DEWEY LANGFORD &
ORRICK & TERRELL,
Attorneys for Plaintiffs in Error.

(Endorsed:) P. O. Cox *et al.*, Plaintiff- in Error, *vs.* The State of Texas, Defendant in Error. Assignments of Error. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Apr. 10, 1905. R. H. Connerly, Clerk.

Supersedeas Bond.

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

P. O. Cox et al., Plaintiffs in Error,
vs.
The State of Texas, Defendant in Error.

Know all men by these presents, That we, P. O. Cox, W. M. Evans and Sam Levy, as principals, and the United States Fidelity & Guaranty Co. of Baltimore, Maryland as surety, are held and firmly bound unto the State of Texas in the full and just sum of Thirty-five Hundred Dollars ($3500) to be paid to the said State of Texas, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 10th day of April, in the year of our Lord, One Thousand Nine Hundred and Five.

Whereas at a regular term of the District Court of the State of Texas held in Hamilton County, Texas, on March 23rd 1904 in a suit pending in said court between The State of Texas, plaintiff, and P. O. Cox, W. M. Evans and Sam Levy, defendants, a judg-
104 ment was rendered against said defendants for the sum of Fifteen Hundred Dollars besides cost of suit, and

Whereas from said judgment the said defendants duly appealed said case to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, which court on the 11th day of January, 1905 rendered a judgment affirming said judgment of the District Court of Hamilton County, Texas, and

Whereas a motion for rehearing was duly made in said court and overruled and thereafter on the 15th day of March, 1905, within the time prescribed by law, a petition for writ of error to the Supreme Court of Texas was duly filed in the clerk's office of said Court of Civil Appeals for the Third Supreme Judicial District of Texas, and

Whereas said petition was rejected and refused by the Supreme Court of the State of Texas on the 22nd day of March, 1905 and the said defendants, P. O. Cox, W. M. Evans and Sam Levy, have obtained a writ of error and filed a copy thereof in the clerk's office of the said Court of Civil Appeals for the Third Supreme Judicial District of Texas to reverse the judgment in the aforesaid suit and a citation to the said State of Texas or its attorneys of record citing and admonishing it to be and appear at the Supreme Court of the United States at Washington within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said P. O. Cox, W. M. Evans and Sam Levy shall prosecute their said writ to effect and answer all damages and costs if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

[SEAL.] P. O. COX,
By SAM LEVY, *Ag't.*
SAM LEVY.
W. M. EVANS.
UNITED STATES FIDELITY & GUARANTY CO. OF BALTIMORE, MARYLAND,
By J. J. MASSIE, *Gen'l Ag't.*

Sealed and delivered in the presence of:
E. C. ORRICK.

105 STATE OF TEXAS, *County of Tarrant:*

On this 10th day of April, 1905 personally appeared before me, J. J. Massie, who says that he is the agent of the United States Fidelity & Guaranty Co. of Baltimore, Maryland. That the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and the said J. J. Massie acknowledged such instrument to be the free act and deed of said corporation.

J. J. MASSIE.
JAMES GILFORD BROWNING,
Notary Public in and for Tarrant County Texas. [SEAL.]

I hereby approve the foregoing bond and sureties this 10th day of April, 1905.

H. C. FISHER,
Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

the free act and deed of said corporation.

J. J. MASSIE.
[SEAL.] JAMES GILFORD BROWNING,
Notary Public in and for Tarrant County, Texas.

STATE OF TEXAS, *County of Tarrant:*

On this day personally appeared before me, Sam Levy and W. M. Evans, known to be the persons described in and who executed the foregoing bond, and the said Sam Levy also appearing as the agent of the said P. O. Cox, acknowledged that they executed the same as their free act and deed.

Given under my hand and seal of office this 10th day of April, 1905.

[SEAL.] JULIA L. EWELL,
Notary Public in and for Tarrant County, Texas.

J. J. MASSIE.

106 (Endorsed:) P. O. Cox, *et al.*, Plaintiffs in Error, *vs.* The State of Texas, Defendants in Error. Supersedeas Bond. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Apr. 10, 1905. R. H. Connerly, Clerk.

Bill of Costs of Court of Civil Appeals.

No. 3395.

P. O. COX ET AL.
vs.
STATE OF TEXAS.

Appeal from Hamilton County.

Filing Record	.50
Docketing Cause	.50
Appearances	1.00
Filing Briefs	1.00
Filing and Entering Motion	.70
Orders	3.00
Filing 17 Extra Papers	1.70
Judgment	1.00
Taxing Costs	.50
Mandate	1.50
Recording Opinion	.10
Certified Copy of Opinion	

Certified Copy of Bill of Costs	.75
Costs of Supreme Court of Texas	7.00
Transcript Fee to U. S. Sup. Crt	55.50
Notices, (9)	4.50
Issuing 1 Precept	1.00
Sheriff's Fees	.75
Amt. Brot. Ford	$81.00

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Amt. Brot. Ford	$81.00
Copies of Motion	3.50
Certified Copy orders to Sup. Crt	2.00
Total	$86.50

Clerk's Certificate.

Clerk's Office, Court of Civil Appeals, at Austin.

I, R. H. Connerly, Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of The State of Texas, hereby certify that the foregoing 106 pages contain true and correct copies of the proceedings had in the district court of Hamilton County, in this Court and in the Supreme Court of Texas, in cause No. 3395, P. O. Cox *et al.*, appellants, *vs.* The State of Texas, appellee, as the same appear from the files of said cause in this Court. I further certify that the following four pages are the original writ of error, and the original citation in error filed in this court in said cause.

In testimony whereof, witness my hand and the seal of said Court at Austin, this the 1st day of May, A. D. 1905.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY, *Clerk.*

108 In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

P. O. COX ET AL., Plaintiffs in Error,

vs.

THE STATE OF TEXAS, Defendant in Error.

Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, Greetings:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals for

the Third Supreme Judicial District of Texas before you or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between The State of Texas which was plaintiff in the District Court of Hamilton County, Texas, was appellee in the Court of Civil Appeals for the Third Supreme Judicial District of Texas and is defendant in error herein, and P. O. Cox who resides in Comanche County, Texas and Sam Levy and W. M. Evans who reside in Tarrant County, Texas who were defendants in the District Court of Hamilton County, Texas, appellants in the Court of Civil Appeals for the Third Supreme Judicial District of Texas and plaintiffs in error herein, wherein was drawn in question the validity of a statute of the state of Texas on the ground of the said statute being repugnant to the constitution of the United States, and the decision was in favor of its validity and manifest error hath happened to the great damage of the said P. O. Cox, Sam Levy and W. M. Evans as by their complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein
109 given, then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States together with this writ so that you may have the same at Washington on the 10th day of May, 1905 in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States shall be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court 11 day of April in the year of our Lord, 1905.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk of the United States Circuit Court
for the Western District of Texas,
By SCOTT W. KEY, *Deputy.*

Allowed by
H. C. FISHER,
Chief Justice of the Court of Civil Appeals
for the Third Supreme Judicial District of Texas.

A copy of this writ is this day filed in my office for use of the defendant in error.

R. H. CONNERLY,
Clerk of the Court of Civil Appeals
for the Third Supreme Judicial District of Texas.

110 [Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin Texas, Apr. 11th, 1905. R. H. Connerly Clerk.

111 In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

P. O. COX ET AL., Plaintiffs in Error,
vs.
THE STATE OF TEXAS, Defendant in Error.

Citation in Error.

The United States of America — the State of Texas or its attorney of record, Greeting:

You are hereby cited and admonished to be at the Supreme Court of the United States at Washington within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin, Texas, wherein P. O. Cox, W. M. Evans and Sam Levy are plaintiffs in error and The State of Texas is defendant in error, and show cause, if any there be, why judgment rendered against the said plaintiffs in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable H. C. Fisher, Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas this 10th day of April in the year of our Lord One Thousand Nine Hundred and Five.

H. C. FISHER,
Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

We hereby acknowledge service of this citation and acknowledge the receipt of a true copy thereof.

MAIN & CHESLEY,
H. E. CHESLEY,
J. C. MAIN,
Att'ys of Record for the State of Texas.

112 I hereby accept service of this citation and acknowledge the receipt of a true copy thereof.

R. O. DAVIDSON,
Atto. Gen'l of Texas.

Ap'l 11th, 1905.

I hereby accept service of this citation and acknowledge the receipt of a true copy thereof.

S. W. T. LANHAM,
Gov'r of Texas.

[Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Apr. 18 1905. R. H. Connerly Clerk.

Endorsed on cover: File No. 19,767. Texas court of civil appeals, 3d supreme judicial district. Term No. 266. P. O. Cox Sam Levy, and W. M. Evans, plaintiffs in error, *vs.* The State of Texas. Filed May 16th, 1905. File No. 19,767.